





Wm^m L^d B^p of Astar

John L^d B^p of Chichester

His Grace S^r L^d A^r B^p of Canterbury

The L^d B^p of Peterborough

Jonathⁿ L^d B^p of Bristol

Francis L^d B^p of Ely

The B^p of Bath & Wells

6495 b 44

THE
PROCEEDINGS
AND
TRYAL

IN THE CASE OF

The Most Reverend Father in GOD

WILLIAM

Lord Archbishop of *CANTERBURY*,

And the Right Reverend Fathers in God,

WILLIAM Lord Bishop
of *St. Asaph*,

FRANCIS Lord Bishop
of *Ely*,

JOHN Lord Bishop of
Chichester,

THOMAS Lord Bishop
of *Bath and Wells*,

THOMAS Lord Bishop
of *Peterborough*, and

JONATHAN Lord
Bishop of *Bristol*.

In the Court of *Kings-Bench* at *Westminster*, in *Trinity-Term* in the Fourth Year of the Reign of King
James the Second, *Annoque Dom. 1688*.

L O N D O N:

Printed for *J. Nicholson*, *J. Walthoe*, *G. Conyers*, *J.*
and *D. Sprint*, *T. Ballard*, *W. Mears* and
J. Browne. MDCCXVI.



To his Most Illustrious Highness

WILLIAM HENRY,
PRINCE of Orange.

May it please Your Highness,

HOW deeply the Design was laid, and with what Violence carry'd on, by those who lately Steer'd the Helm of this State, for the Subversion of the Establish'd Religion and Government of these Three Kingdoms, is already sufficiently well known to *Your Highness*. Among the rest, one of their Chiefest Contrivances was, by a Malicious and Illegal Prosecution, to have extinguish'd the Brightest Luminaries of the *English Church*; to the end, that the benighted People might the more easily, after that, have been mis-led into the Pitfalls of *Superstition* and *Slavery*.

But as Heaven began their Disappointment, in eluding both at once their Subtlety and Malice, by the speedy Deliverance of the Seven *Renowned Sufferers*, from the Jaws of their Oppressors; So the utter Dissolution of their Arbitrary Command, and Domineering Power, under the Conduct of
the

DEDICATION.

the same Providence, was fully compleated, *Great SIR*, by Your Deliberative Prudence, and Undaunted Courage.

To Your *Illustrious Highness*, therefore, the Oblation of these Sheets, containing an exact Account of the Prosecution and Tryal of those Heroick Prelates, is most justly due; as being that, wherein *Your Highness* may, in part, discern the Justice of the Cause You have so generously undertaken; and that it was not without Reason, that the *English* Nation so loudly implor'd Your timely Assistance. A clear Convincement, that it was not Ambition, nor the Desire of spacious Rule. but a noble and ardent Zeal for the most Sacred Worship of God, which rous'd Your Courage to rescue a *Distressed Land*, whose *Religion, Laws, and Liberties* were just ready to have been overwhelm'd with *French Tyranny* and *Romish Idolatry*.

Therefore, that the Nation may long continue under the Protection of Your Glorious Administration, is the Prayer of,

Great SIR,

Your Highness's most Humble,

Most Faithful, and

Most Obedient Servants.

December 13, 1688.

NOT long after the Tryal of his Grace the Lord Archbishop of *Canterbury*, and the other Six Bishops, and while the Passages thereof were fresh in my Memory, I perused that Copy of this Proceeding and Tryal, which Mr. *Ince*, their Lordships Attorney, had caused to be taken for their Use: And I have also lately read over the same again, as intended to be printed by Mr. *Basset* and Mr. *Fox*, and I do think it to be a very exact and true Copy of the said Proceeding and Tryal, according to the best of my Judgment, having been very careful in perusing thereof.

Job. Powel.

These Peers were present on the 15th Day of *June*, 1688, when the Lords, the Archbishop and Bishops, were brought into Court from the Tower, upon the *Habeas Corpus*, viz.

Lord Marq. of <i>Hallifax</i> .	Earl of <i>Carlisle</i> .
Lord Marq. of <i>Worcester</i> .	Earl of <i>Danby</i> .
Earl of <i>Shrewsbury</i> .	Earl of <i>Radnor</i> .
Earl of <i>Kent</i> .	Earl of <i>Nottingham</i> .
Earl of <i>Bedford</i> .	Lord Visc. <i>Fauconberge</i> .
Earl of <i>Dorset</i> .	Lord Grey of <i>Ruthyn</i> .
Earl of <i>Bullingbrook</i> .	Lord <i>Paget</i> .
Earl of <i>Manchester</i> .	Lord <i>Chandoys</i> .
Earl of <i>Burlington</i> .	Lord <i>Vaughan Carbery</i> .

These Peers were present on the Day of the Trial, being the 29th of *June*, 1688, and the Feast of *St. Peter and St. Paul*, viz.

Lord Marq. of <i>Hallifax</i> .	Earl of <i>Danby</i> .
Lord Marq. of <i>Worcester</i> .	Earl of <i>Suffex</i> .
Earl of <i>Shrewsbury</i> .	Earl of <i>Radnor</i> .
Earl of <i>Kent</i> .	Earl of <i>Nottingham</i> .
Earl of <i>Bedford</i> .	Earl of <i>Abington</i> .
Earl of <i>Pembrook</i> .	Lord Visc. <i>Fauconberge</i> .
Earl of <i>Dorset</i> .	Lord <i>Newport</i> .
Earl of <i>Bullingbrook</i> .	Lord Grey of <i>Ruthyn</i> .
Earl of <i>Manchester</i> .	Lord <i>Paget</i> .
Earl of <i>Rivers</i> .	Lord <i>Chandoys</i> .
Earl of <i>Stamford</i> .	Lord <i>Vaughan Carbery</i> .
Earl of <i>Carnarvon</i> .	Lord <i>Lumley</i> .
Earl of <i>Chesterfield</i> .	Lord <i>Carteret</i> .
Earl of <i>Scarsdale</i> .	Lord <i>Ossulston</i> .
Earl of <i>Clarendon</i> .	

'Tis possible more of the Peers might be present both Days, whose Names, by reason of the Croud, could not be taken.

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*De Termino Sanctæ Trinitatis
Anno Regni Jacobi Secundi Re-
gis, Quarto, In Banco Regis.*

Die Veneris Decimo Quinto Die Junii, 1688.

Dominus Rex versus Archiep. Cantuar: & al.

Sir Robert Wright Lord	} Judges.
Chief Justice	
Mr. Justice Holloway	
Mr. Justice Powell	
Mr. Justice Allybone	}



HIS being the first Day of the Term,
His Majesty's Attorney-General, (as
soon as the Court of *Kings-Bench*
was sat) moved on the behalf of
the King for a *Habeas Corpus*, re-
turnable immediate, directed to the
Lieutenant of the Tower, to bring up his Grace
the Lord Arch-Bishop of *Canterbury*, and the
Bishops of *St. Asaph*, *Ely*, *Chichester*, *Bath* and
Wells, *Peterborough*, and *Bristol*; which was granted:
B And

2 *The Tryal of the Seven Bishops.*

And with great dispatch about Eleven a Clock the very same Day the Lieutenant returned his Writ, and brought the said Lord Arch-Bishop and Bishops into Court; where being sat down in Chairs set for that Purpose, Mr. Attorney-General moved the Court, *Viz.*

Mr. Att. Gen. My Lord, I pray that the Writ and Return may be read, by which my Lords the Bishops are brought hither.

L. Ch. Just. Read the Return.

Clerk reads the Return, which in English is as follows, viz.

I Sir Edward Hales Baronet, *Lieutenant of the Tower of London, named in the Writ to this Schedule annexed, To our Most Serene Lord the King do most humbly certifie, That before the coming of the said Writ, to wit, the Eighth Day of June, in the Fourth Tear of the Reign of our Lord James the Second, King of England, &c. William Lord Arch-Bishop of Canterbury, William Lord Bishop of St. Asaph, Francis Lord Bishop of Ely, John Lord Bishop of Chichester, Thomas Lord Bishop of Bath and Wells, Thomas Lord Bishop of Peterborough, and Jonathan Lord Bishop of Bristol, mentioned in the aforesaid Writ, were committed and delivered to, and are retained in my Custody; by Vertue of a certain Warrant under the Hands and Seals of George Lord Jeffries, Baron of Wem, Lord High Chancellor of England, Robert Earl of Sunderland, Lord President of the Privy Council of our Lord the King, Henry Lord Arundel of Wardeer, Keeper of the Privy Seal of our said Lord the King; William Marquess of Powis, John Earl of Mulgrave, Lord Great Chamberlain of England; Theophilus Earl of Huntington, Henry Earl of Peterborough,*

The Tryal of the Seven Bishops. 3

borough, William Earl of Craven, Alexander Earl of Moray, Charles Earl of Middleton, John Earl of Melfort, Roger Earl of Castlemain, Richard Viscount Preston, George Lord Dartmouth, Sidney Lord Godolphin, Henry Lord Dover, Sir John Earnly, Knight, Chancellor of the Exchequer of our said Lord the King; Sir Edward Herbert, Knight, Chief Justice of the Common Bench of our Lord the King, and Sir Nicholas Butler, Knight, Lords of his Majesty's Most Honourable Privy Council, to me directed, the Tenor of which Warrant follows in these Words, viz.

“THESE are in his Majesty's Name, and by
 “ his Command to require you to take in-
 “ to your Custody the Persons of William Lord
 “ Arch-Bishop of Canterbury, William Lord Bishop
 “ of St. Asaph, Francis Lord Bishop of Ely, John
 “ Lord Bishop of Chichester, Thomas Lord Bishop
 “ of Bath and Wells, Thomas Lord Bishop of Pe-
 “ terborough and Jonathan Lord Bishop of Bristol,
 “ For Contriving, Making and Publishing a Sediti-
 “ ous Libel in Writing against his Majesty and his Go-
 “ vernment, and them safely to keep in your Custody
 “ until they shall be delivered by due Course of
 “ Law; For which this shall be your sufficient
 “ Warrant. At the Council Chamber in White-
 “ Hall, this Eighth Day of June, 1688. And
 “ this is the Cause of the taking and detaining, &c.

Lord Ch. Just. Well, what do you desire, Mr. Attorney?

Mr. Att. Gen. We pray, for the King, that the Return may be filed.

Lord Ch. Just. Let it be filed.

Mr. Att. Gen. By this Return your Lordship observes, what it is my Lords the Bishops were

4 *The Tryal of the Seven Bishops.*

committed to the Tower for; it is by Warrant from the Council Board, where, when their Lordships appeared, they were not pleased to give their Recognizances to appear here, as they were required by the King to do; and thereupon they were committed to the Tower, and now come before the Court upon this Return of the King's Writ of *Habeas Corpus*; and by the Return it does appear, it was for *Contriving, Writing, Framing, and Publishing a Seditious Libel* against His Majesty and the Government: My Lord, it is our Duty, who are the King's Council, pursuant to our Orders, to prosecute such kind of Offences, and when the proper time shall come for us to open the nature of the Offence, your Lordships will then judge, what reason there is for this Prosecution; but in the mean time, what we are now to offer to your Lordship is, The Officer of this Court has an Information against his Grace the Archbishop of *Canterbury*, and the rest of my Lords the Bishops, which we desire may be read to them, and pray that they may plead to it, according to the Course of the Court.

Sir Rob. Sawyer. If it please your Lordship, to spare us a Word for my Lords the Bishops.

Mr. Att. Gen. My Lord, we pray for the King the Information may be read.

Sir Rob. Sawyer. We desire to be heard a Word first.

Mr. Soll. Gen. We oppose your speaking any thing, till the Information hath been read.

Sir Rob. Sawyer. But what we have to offer is proper before it be read.

Mr. Att. Gen. Your time is not yet come, *Sir Robert.*

Sir Rob. Sawyer. Yes, this is our proper time for what we have to say, and therefore we move it now, before there be any other proceedings in this matter.

Mr.

The Tryal of the Seven Bishops. 5

Mr. Soll. Gen. It is irregular to move any thing yet, pray let the Information be read first.

Mr. S. Pemberton. If your Lordship please to spare us, we will offer nothing but what is fit for us to do.

Sir Rob. Sawyer. And now is our proper time for it.

Mr. Soll. Gen. Gentlemen, You do know the way of Proceeding in such Cases better than so, I am sure; as for you, *Sir Robert Sawyer*, you have often oppos'd any such Motion as irregular, and I hope the Case is not alter'd, however you may be; the course of the Court is the same.

Sir Rob. Sawyer. With Submission, if your Lordship please to spare me a Word, that which I would move, is, to discharge my Lords the Bishops upon this Return, and from their Commitment upon this Warrant.

Mr. Att. Gen. Surely these Gentlemen think to have a Liberty above all other People; here is an Information, which we pray my Lords the Bishops may hear read, and plead to.

Mr. Soll. Gen. Certainly, *Sir Rob. Sawyer*, you would not have done thus half a Year ago.

Sir Rob. Sawyer. What would not I have done? I move regularly (with Submission) to discharge my Lords the Bishops from their Commitment; if they are not here legally Imprisoned, now they are before your Lordships upon this Writ, then you will give us leave to move for their Discharge, before any thing else be said to them; and that is it we have to say, to demand the Judgment of the Court upon this Return, whether we are legally Imprisoned?

Mr. Att. Gen. Under Favour, my Lord, neither the Court, nor they, are ripe for any Motion of this Nature yet.

6 *The Tryal of the Seven Bishops.*

Mr. S. Pemberton. If we do not move it now, it will afterwards (I fear) be too late.

Mr. Soll. Gen. These Gentlemen are very forward, but certainly they mistake their time; this is a *Habeas Corpus* that's brought by the King, and not by the Prisoners; and therefore they are too soon, till they see what the King has to say to them.

Mr. Att. Gen. Your Lordship cannot as yet be moved for your Judgment about the Legality of this Commitment, because this Writ was granted upon our Motion, who are of Council for the King, and upon this Writ they are brought here: and what is it we desire for the King? Certainly nothing but what is Regular; we have here an Information for the King against my Lords, and we desire they may plead to it.

Mr. S. Pemberton. Good my Lord, will you please to hear us a little to this Matter?

L. C. Just. Brother *Pemberton*, we will not refuse to hear you by no means, when you speak in your proper time, but it is not so now; for the King is pleased, by his *Attorney* and *Sollicitor*, to Charge these Noble Persons, my Lords the Bishops, with an Information, and the King's Council call to have that Information read, but you will not permit it to be read.

Mr. S. Pemberton. Pray my Lord spare us a word: if we are not here as Prisoners regularly before your Lordship, and are not brought in by the due Process of the Court, then certainly the King's Council or the Court have no Power to charge us with an Information; therefore we beg that you will hear us to that, in the first place, whether we are Legally here before you?

Mr. Soll. Gen. These Gentlemen will have their proper time for such a Motion hereafter.

Mr.

The Tryal of the Seven Bishops. 7

Mr. Pollexfen. No, *Mr. Solicitor*, this is, without all Question, our only time for it, we shall have no time afterwards.

Mr. Att. Gen. Yes, you will; for what do we who are of Council for the King now ask of the Court, but that this Information may be read? when that is done, if we move to have my Lords the Bishops plead, then they may move what they will; but before we make that Motion, they cannot break in upon us with their Motion; and with Submission to your Lordship, whether my Lords the Bishops were duly Committed, is not yet a Question.

Mr. Finch. But it is, and this the fittest time for it.

Mr. Soll. Gen. Pray will you hear us quietly what we have to say, and then answer us with Reason, if you can; I think we are in a proper way, but they are not, my Lord; for (as I said,) my Lords the Bishops are brought by the King's Writ upon our Motion for the King, not upon theirs; and now we have them here before the Court, We for the King would charge them with an Information; which Information, that they and the Court may know what it is they are charged with, we pray it may be read to them by the Clerk; and when it is read, let these Gentlemen say what they will for them, they shall have their time to speak; but certainly they ought not to obstruct the King's Proceedings, nor oppose the Reading of the Information to these noble Lords, who are brought here in Custody into Court, to this very purpose, that they may be charged with this Information.

Mr. S. Pemberton. But we have somewhat to say, before you can come to that, *Mr. Solicitor*.

Mr. Soll. Gen. You ought not to be heard as yet.

Mr. S. Pemberton. Under favour we ought to be heard.

8 *The Tryal of the Seven Bishops.*

Sir Rob. Sawyer. My Lord, Mr. Solicitor has opposed our being heard, but we now desire he would hear our Answer to it, and that which we have to say, is this, That my Lords the Bishops are not here Regularly in the Court to be charged with an Information; and if the Law be not with us in this point, as we doubt not to make appear it is, no question but when your Lordship has heard what we have to say, you will give a Right Rule in it: My Lord, we say, that by the Rules of Law, no Man ought to be charged with an Information or Indictment, by the Express Statute of *Edward* the Third, unless he come into Court by Legal Process; that is a standing Rule, and the practice of this and all other Courts is pursuant to it; Now in this Court you have several Processes that go out of this Court, and he that comes as taken by vertue of a *Capias*, or any Attachment after a Summons, or by *Venire* in the nature of a *Subpœna*; I say, he that comes in upon these Processes may be Charged with an Information; but where a Person is in Prison, Committed by another Jurisdiction, and another Authority, than that of this Court; when the Prisoner is brought here by *Habeas Corpus*, the first thing the Court has to do, is to enquire whether he be Legally Committed; to that end the Return is filed, and the Party has leave to make his Exceptions to it, as we do in this Case. My Lords are brought here upon a *Habeas Corpus*, the Return of which has been read, and now the Return is filed, we are proper to move, that my Lords may be discharged; for you now see what they are Committed for, it is for a Misdemeanor in making and publishing a Libel, that's the matter for which they are Committed; and it appears by the Return likewise, that they who are
thus

thus Committed are Peers of the Realm, for so my Lords the Bishops all are, and for a Misdemeanour they ought not by Law to have been Committed.

L. C. J. You go too far now, Sir *Robert Sawyer*, I would willingly hear you whatsoever you have to say; but then it must be in its due time.

Mr. Att. Gen. This very discourse (indeed I have heard) has pass'd up and down the Town for Law; we may see now whence they had it.

Mr. Soll. Gen. I know it has heretofore been urged by me, but denyed by them who now urge it, and I am glad that they now learn of me to tack about.

L. C. J. Look you Gentlemen, do not fall upon one another, but keep to the matter before you

Mr. S. Pemberton. So we would, my Lord, if the King's Coucil would let us; First, we say, we being brought here upon a Return of a *Habeas Corpus*, there was neither at the time of the Commitment Cause to Imprison us, nor was there by the Warrant any Cause to detain us in Prison; and for that, besides what has been hinted at, we say further, that here it is returned, that we were Committed by such and such Persons, Lords of the Privy Council; but the Return doth not say, that it was done by them, as Lords of the Privy Council, which must be in Council; for if it be not in Council, they have not power to make such a Warrant for the Commitment of any Person, and that we stand upon; here is a Return that is not a good Return of a Legal Commitment, and therefore we pray my Lords may be discharged.

Mr. Pollexfen. Pray, my Lord, spare me a word: That is the thing we humbly offer to your Lordships Consideration; and under Favour, I think we are proper both as to the Matter, and as to the Time;

110 *The Tryal of the Seven Bishops.*

Time; the Return is now filed before you: if by this Return there appears to have been such a Cause to commit these Lords to Prison as is legal, then we acknowledge they may in a legal Course be brought to answer for their Offence; but, with Submission, it appears not, by any thing that is in this Return, that my Lords the Bishops were committed by the Order of the Privy-Council. All that is said is, That they were committed by my Lord Chancellor, and those other Persons named, Lords of the Privy-Council; which we conceive is not a good Return; for they can do nothing as Lords of the Privy-Council, except only as they are in Council, and by Order made in Council; except that do appear, they have no Power to commit. Then take the Case to be so; here is a Man committed by one that has no Authority to commit him, and he is brought by *Habeas Corpus* into this Court, what shall the Court do with him? Shall they charge him with an Information? No, it does appear that he was never in Custody, but under a Commitment by those who had no legal Power to commit him; and therefore he must be discharged; and that we pray for my Lords the Bishops. What the King's Council may have to say to them afterwards, by way of Information or otherwise, they must take the regular Methods of the Law to bring my Lords the Bishops to answer; but as the Case stands here before you, upon this Return, it does appear, they had no Authority to commit them, by whose Warrant they were committed; and therefore this Court has nothing to do but to discharge them.

Mr. Finch. I beg your Lordship's leave to say one word further on the same side: I think, with humble Submission, this is the most proper time for us to make this Motion, for here is a *Habeas Corpus*

The Tryal of the Seven Bishops. 11

Corpus returned, this Return is filed, and then the King's Council move to charge my Lords the Bishops with an Information: That Motion of theirs (we say) is too soon, unless my Lords are here in Court, I mean legally in Court; for no Man is in Court so as to be liable to be charged with an Indictment or Information, that is not brought into Court by legal Process, or as a Prisoner upon a legal Commitment; then, my Lord, with humble Submission, we say, that it doth appear by this Return that my Lords the Bishops are not here legally in Court, because this Commitment of theirs was not a legal Commitment. And two Objections we have to it; the one is, That the Persons committing had no Authority to commit; for the Return says, that it was by vertue of a Warrant under the Hands of such and such, being Lords of the Council, and they (we say) have no Authority to do this: The other Objection is, That the Fact for which they were committed, they ought not to have been imprisoned for; the Fact charged upon them is in the nature of it a bare Misdemeanour, and for such a Fact it is the Right of my Lords the Bishops (as Peers of the Realm) that they ought to be served with the usual Process of *Sul pona*, and not to be committed to Prison. These are the two Objections that we have to this Return, and this is (under favour) the proper time for us to make this Objection, before the King's Council can charge my Lords the Bishops with an Information.

L. Ch. Just. What say you to it, Mr. Attorney?

Mr. Att. Gen. With submission, my Lord, these Gentlemen have out of course and preposterously let themselves into this Discourse, and when all is done, we must recur to that which we moved to your Lordship before, to desire that your Lordship would order the Information to be read, and when
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12 *The Tryal of the Seven Bishops.*

we call my Lords to plead to the Information, then will be their proper time to make this Objection; for 'tis a strange thing certainly for Men to make Objections before they know what it is they are charged with. They say, the ground of their Motion is, because my Lords the Bishops are here in Court upon the Return of an *Habeas Corpus*, and therefore they come in upon a Commitment (as they say) for that which they ought not to be committed for at all, and we cannot charge them unless they be properly in Court. Now for that it is true, if that Commitment of theirs were the only thing that was here before the Court, then the Court would, if that Commitment were illegal, discharge them of that; but when a man is present here in Court, brought into Court, let him come how he will, he is not to have any longer time than that Instant to appear to, and be charged with the Information. 'Tis true, upon a *Subpœna*, which is in the Nature of a Summons, there a Man hath (as it were) an *Essoyn*, and may make his Excuse, and he shall have time; but when he is present in Court, either as a Person privileged, as an Officer, or as a Prisoner, he shall be charged presently; and these Gentlemen are not to let themselves into Invectives against the Commitment, thereby to keep off their being charged with the Information. Besides that, it is strange these Gentlemen should know the Privilege of my Lords the Bishops as Peers, better than all the Lords of the Council, who are most of them themselves Peers; and they that make the Objection should have considered, whether these Lords that made the Commitment did not think themselves concerned in all the Privileges of Peerage as well as these seven noble Lords.

Sir

The Tryal of the Seven Bishops. 13

Sir Rob. Sawyer. Is that an Answer to our Objection, Mr. Attorney?

Mr. Att. Gen. I say, it is a strange Objection, and I answer, 'tis out of due time; for this we say, that my Lords the Bishops being now here in Court as Prisoners upon a Commitment, and we desiring to charge them with an Information, you are not to examine the matter of their Commitment, and therefore I do insist upon it that the Information should be read, and then you will consider whether they are not bound to plead to it.

Mr. Finch. My Lord, I hope Mr. Attorney-General will not think *legal* Objections to be Invectives.

Mr. Att. Gen. Truly I know not what you call *legal* Objections; I do not think yours are so, nor do I think *legal* Objections are Invectives; but I used that Expression as very proper for what you urged against the Commitment.

L. C. J. Nay, Gentlemen, don't quarrel about Words.

Mr. Finch. My Lord, we would not willingly have Words given us to quarrel at.

Mr. Soll. Gen. My Lord, the Question is, whether we are in the right Method of Practice, as to the Course of the Court, or they? It may be these Gentlemen think to make us angry, and take Advantage of our being in a Passion.

Mr. Finch. Mr. Solicitor, we desire to have our Objections answered.

Mr. Soll. Gen. Nay, if you begin to be angry, Gentlemen, we can be angry too.

L. C. J. I would have neither of you be angry.

Mr. Soll. Gen. It seems they would have an Answer to their Objections, but will not suffer us to give it; they would first examine whether my Lords the Bishops have been duly committed; that (we say) is not to be done by the Court as yet: Your
Lord-

14 *The Tryal of the Seven Bishops.*

Lordship sees they are actually in Custody, by a Commitment of the Lords of the Council, that appears by the Return before your Lordship, and for what they were committed, what do we now pray for the King? First, we move for a *Habeas Corpus*, then that this Information may be read, and all is in order to bring this Fact (for which they were committed) to a Tryal. 'Tis said upon the Return, they were sent to the Tower for contriving, writing, and publishing a seditious *Libel* against the King's Person and Government, which (I think) is Crime enough for a Man to deserve to be committed for. They would have you to discharge these Lords from this Commitment, (the Return, as they say, being not *legal*) before the Information be read: But we think their Motion is irregular, for here is a Crime charged in the Commitment, and upon that Commitment they are here now as Criminals before your Lordship; and Mr. *Attorney* has exhibited an Information for the King, which is in the Nature of a Declaration at the King's Suir; and that in this Court, which is the supreme Court now in being for the Tryal of Matters of this Nature. We will come to that Question, whether they were legally committed, when there is a proper time for it; but now we find my Lords the Bishops in Court upon a Commitment for a great Crime; I repeat it again. It is for contriving, writing, and publishing a seditious *Libel* against the King's Person and against the King's Government; and whether the King's Council shall not have leave to make out this Charge by an Information, sure can be no Question at all in this Court. I hear them mention the Statute of *Edward the Third*; but that is not at all to the purpose; that is but what was offered in another Case that may be remembered, and offered by way of Plea, and pre-
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fed with a great deal of Earnestness, but rejected by the Court; and now, what could not be received then by way of *Plea*, these Gentlemen would by their Importunity have you receive by way of *Parole* at the Bar. I suppose the Design is to entertain this great Auditory with an Harangue, and think to perswade the weak Men of the World, (for the wise are not to be imposed upon) that they are in the Right and we in the Wrong; under Favour, my Lord, we are in the Right for the King. We desire this Information may be read, and let them plead what by *Law* they can to it, according to the Course of the Court; but that which they now urge is untimely, and out of Course.

Sir Rob. Sawyer. My Lord, we offer this to your Lordship—

Mr. Att. Gen. Why, Gentlemen, you have been heard before your time already.

Mr. S. Pemberton. Pray, my Lord, give us leave to answer what the King's Council have objected.

L. C. J. The King's Council have answered your Objections, and we must not permit vying and revying upon one another. If you have no more to say, but only as to the Matters that have been urged, you have been heard to it on both sides already.

Mr. S. Pemberton. I would, if you please, answer what has been objected by the King's Council, and state the Case aright.

Mr. Just. Allybone. Brother Pemberton, I do not apprehend that the Objection you make against this Commitment has any weight in it. The Objection (as I take it) is this, that these Lords were not legally committed, because they were committed (says the Return) by such and such Lords of the Council particularly named, and it does not specify them to be united in the Privy-Council. Now truly,

truly, with me that seems to have no weight at all; and I will tell you why. If my *Lord Chief Justice* do commit any Person, and set his Name to the Warrant, he does not use to add to his Name *Lord Chief Justice*, but he is known to be so without that Addition; and would you have a different Return from the *Lieutenant* of the Tower to a *Habeas Corpus*, than the Warrant it self will justify? The *Lords* do not use to write themselves *Privy-Counsellors*, they are known to be so; as well as a Judge, who only writes his Name, and does not use to make the addition of his Office.

Sir Rob. Sawyer. Pray, my Lord, give me leave to be heard to this. I think truly it is a weighty Objection; for, under Favour, we say, it must upon the Return here appear that they were legally committed, before you can charge them with an Information. I do not take Exceptions to the Warrant, because it is subscribed by such Lords, and they do not write themselves *Lords of the Council*, they need not do that, and the Return has averred that they are so; but the Return ought to have been, that it was by Order of the *Privy-Council*, and so it must be, if they would shew my Lords to be legally committed, that they were committed by Order of the *Privy-Council*, and not by such and such particular Persons, *Lords of the Privy-Council*. So in the Case put by Mr. *Justice Allynbone*, of a Commitment by your Lordship, or any of the Judges, it must be returned to be by such a Warrant, by such a one *Chief Justice*, for that shews the Authority of the Person committing; and then your Lordship's Name to it indeed is enough, without the Addition: But if it does not appear by the Return that there was sufficient Authority in the Person to commit, your Lordship cannot take it to be a legal Commitment. But now in
this

this Case they could have no Authority to *commit* but in Council, and this Return seems to make it done by them as particular Persons, and that's not a good Return (with your Lordship's favour) upon which these Reverend and *Noble Lords* can be detained in Prison. But what do they on the other side say to this? Why, we shall be heard to it anon: But, my Lord, they very well know it would be too late for that Effect which we desire of our Motion, and therefore we lay the *Objections* before you now in its proper time (say we) you ought not to read any Information against us, because we are not legally here before the Court; and sure, that which was said by the King's Council, that your Lordship may charge any one that you find here in Court, which way soever he comes in, cannot be legal.

Mr. Att. Gen. Who ever said so?

Sir Rob. Sawyer. I apprehended you said so, Mr. Attorney, or else you said nothing.

Mr. Att. Gen. Sir Robert Sawyer, you of that side have a way of letting your selves in to say the same things over and over again, and of making us to say what you please.

Sir Rob. Sawyer. Truly I did apprehend you laid down that for Doctrine, which I thought a very strange one; for we say, with your Lordship's favour, he that is in Court without a *legal Process*, is not in Court so as to be charged with an Information.

S. Pemberton. My Lord, it is not the Body being found here that intitles the Court to proceed upon it, but the Person accused is to be brought in by legal Process: Then if we be not here by legal Process, the Information cannot be charged upon us; and if we suffer it to be read, it will be too late for us to make this Objection.

18 *The Tryal of the Seven Bishops.*

L. C. J. That you have all said over and over, and they have given it an Answer.

Mr. Att. Gen. Pray, *Mr. Serjeant*, will you make an end? you have repeated your Objection over and over, I know not how often, and will never be contented with our Answer.

Mr. Just. Allybone. Sir *Rob. Sawyer*, that which you said in answer to the Case I put, methinks does not answer it: For if the Return be as good, that it was by a Warrant from such an one, *Lord Chief Justice*; as if my *Lord Chief Justice* had added the Title of his Office to his own Name when he subscribed the Warrant; then this Return, That this was done by such and such Lords of the Council, must be as good as if they had added that to their own Names.

Sir Rob. Sawyer. That is not our Objection.

Mr. Att. Gen. Your Objection has been heard and answered; we pray the Information may be read.

Mr. Serj. Pemberton. No, we are not come to that yet.

Mr. J. Allybone. Pray, would you have an *Averment* by the Lieutenant of the *Tower*, in his Return to an *Habeas Corpus*, that it was done by them in the Council-Chamber?

Mr. Finch. My Lord, the Difference is this, with Submission; a Commitment by Sir *Robert Wright*, Chief Justice, is a good Commitment, and a Return of that Nature were a good Return, because he is Chief Justice all over *England*, and hath Authority to commit wherever he is; but a Commitment by such an one, or such and such Lords of the Privy-Council, cannot be a good Return of a Commitment, because, though they be Lords of the Council, yet neither single, or apart, nor all together, have Authority to do such an Act, unless

less they be assembled in the Privy-Council; there their Authority is circumscribed: So that that must needs be a great Difference between a Commitment made by a Judge, who is always so, and a Commitment by a Lord, or so many Lords, by the Name of Lords of the Privy-Council, who carry not their Authority about with them, but are limited to their Assembly in Council.

Mr. J. Allybone. Mr. *Finch*, indeed your Objection is worth something, if my Lord Chief Justice could not act but as under the character of Chief Justice; for you are now arguing, that these Lords could not do this Act, but as Lords of the Council in Council: The same (say I) may be said of a Commitment by the Lord Chief Justice; he cannot do it but under the Formality of his Authority, as he is Chief Justice, unless you will make it impossible for him to do any thing but as Chief Justice, or unless you make it impossible to separate his Person from his Authority.

Mr. Finch. But, Sir, the Difference lies here; the Authority of the one is general and universal, and goeth with him wherever he goes; the other's Authority is limited to a particular Sphere.

Mr. J. Allybone. Why, would you have it averred, That they did it being assembled in Council?

Mr. Finch. Under favour, they cannot justify any thing that was done by them as Lords of the Council, but in the Privy-Council.

Mr. J. Powel. Truly, my Lord, for my part, I think there is no such great necessity of haste in this Matter: Here are Exceptions taken to this Return; and the Matter transacted now before us appears to me to be of very great weight, peradventure a greater or a weightier has not been agitated in this Place in any Age. It concerns these Noble and Reverend Lords in point of Liberty, it

comes suddenly upon us; and therefore, my Lord, I think it very fit we should consider a little of this Matter, and consult the Precedents of Returns, how they are; for there are multitudes of Returns of Writs of *Habeas Corpus* in this Court; therefore it were requisite that we did consult the Forms of other Returns, and how the Precedents, as to this Matter, have always been: If they are according as this is, then all is well; but if they be otherwise, it is fit we should keep to the usual Forms.

L. C. J. What's your Opinion of it, Brother *Allybone*?

Mr. J. Allybone. I am still of the same Mind I was, my Lord, That he could make no Return, but ~~this~~ Return he has made; and if his Warrant was insufficient upon this Account, that these particular Persons, Lords of the Privy-Council, did this Act without saying that they did it in Privy-Council, then 'tis not his Return that could mend it: And truly I do not know that there does need any Precedent for this; for every one knows where the Lords of the Council are; and 'tis a sufficient Averment, this, that is in the Return.

Mr. Pollexfen. They are Lords of the Council every where, but they do not act as Lords of the Council any where but in Council.

Mr. J. Allybone. So my Lord Chief Justice is Chief Justice every where.

Mr. Finch. And he can do judicial Acts, as such, every where; but the Lords of the Council cannot act but in the Council.

Mr. J. Allybone. Nor is it to be presumed that they did do it.

Mr. Finch. It is not a Presumption that is to make any thing in this Case; but the Question is, whe-

The Tryal of the Seven Bishops. 21

whether here be a legal Return of a legal Commitment?

Mr. J. Allybone. Such publick Persons, in such publick Acts, can never be presumed to act in their separate private Capacities.

Mr. Finch. But, with Submission, your Lordship can judge only what is before you in this Return, whether it be a good Return, and whether here be a good Authority asserted in the Persons that did commit my Lords the Bishops.

L. C. J. Truly, as to this Objection and Exception that has been made by them, I have considered of it, and what has been said on all sides, and I think 'tis the usual way of Commitment; I never saw any other; all the Warrants that ever I saw are of this Form; if there were any Precedents, they should be shewn of that side.

Sir Robert Sawyer. There are multitudes of Precedents otherwise, and none of this Form.

L. C. J. I confess, 'tis a *Case* of great Weight, and the Persons concerned are of great Honour and Value; and I would be as willing as any body to testifie my Respects and Regards to my Lords the Bishops, if I could see any thing in it worth considering of.

Mr. Soll. Gen. There's no Colour for it, if they do but look upon the Statute of the 16th and 17th of the late King, which arraigns the Proceedings of his Privy-Council; that tells you what things belong to the Cognizance of the Privy-Council, and what not; and there you have all the Distinctions about Commitments by the King and Council, and by the Lords of the Council: And that Act will shew that this is a Commitment according to the usual Form. They know very well what the common Style of the Orders and Commitments of Council is, as in other Places, and other

22 *The Tryal of the Seven Bishops.*

Commitments; By such an one, *Chief Justice*, that is the Style that is very well known for such Warrants: So a *Commitment* by such and such, naming them particularly, *Lords of the Council*, that's an Order made by the *Lords in Council*; and that Statute distinguishes between *Commitments* of one sort and the other; and it does it, because sometimes Warrants run in one Form, and sometimes in another; but they all come within the Direction of that Statute. My Lord, we are in a plain *Case*; my Lords the Bishops come regularly before you, upon a *Commitment* by the *Council*; and therefore we pray they may be charged with this Information.

Sir Rob. Sawyer. Pray, will your Lordship give us leave to have that Statute look'd into, which *Mr. Solicitor* speaks of, and then we shall see whether it be to his purpose.

L. C. J. Let the Statute be read.

Mr. Soll. Gen. If it be *Keeble's Book*, it is the 16th of *Charles the First*; if it be the old Book, it is the 16th and 17th of *Car.* towards the End.

Clerk reads. Provided always, and be it enacted, that this Act, and the several Clauses therein contained, shall be taken and expounded to extend only to the Court of Star-Chamber; and to the said Court holden before the President and Council in the Marches of Wales, and before the President and Council in the Northern parts.

Mr. Soll. Gen. It is the Paragraph before that.

Clerk reads. And be it also provided and enacted, That if any person shall hereafter be Committed, Restrained of his Liberty, or suffer Imprisonment, by the Order and Decree

cree of any such Court of Star-Chamber, or other Court aforesaid now, or at any time hereafter, having, or pretending to have the same, or like Jurisdiction, Power, or Authority to commit, or imprison, as aforesaid; or by the Command or Warrant of the King's Majesty, his Heirs or Successors, in their own Persons, or by the Command or Warrant of the Council-Board, or of any of the Lords, or others of his Majesty's Privy-Council, that in every such Case, every person so Committed, Restrained of his Liberty, or suffering Imprisonment, upon demand —

Mr. Soll. Gen. That is all: Your Lordships sees these several Distinctions of the Style of Commitment.

Mr. Att. Gen. Now, pray favour us a little: My Lord, I think these Gentlemen will not deny but that the Lords of the Council can commit. I must confess, they ask that which was pretty reasonable, if the Case was as they would make it; they would have my Lords the Bishops discharged, because there is not a Return of a good Commitment, and that stands upon this presumption, that what is here said to be done by all these Lords, at the end, of whose Names this is added, *Lords of the Privy-Council*, was done by them out of Council, which, I suppose, your Lordship will not presume, but will take it, that they did this as Lords of the Council in Council; and no Man can say, but the Lords in Council can commit.

Mr. Soll. Gen. You may as well presume upon a Warrant made by my Lord Chief Justice, because it

24 *The Tryal of the Seven Bishops.*

is not said where he did it, and therefore he did it in *Scotland*.

Mr. Att. Gen. I say again, unless your Lordship will presume that which is not to be presumed, this must needs be a very good Return.

Mr. Just. Allybone. Truly (as Mr. Solicitor says) you may as well desire us to presume, that my Lord Chief Justice would commit a Man in *Ireland* or *Scotland*; I can see no imaginable difference.

Mr. Finch. My Lord, That which we pray, is, not that your Lordship would presume, but that you would not presume, but take the Return as 'tis before you; and then see whether it can be thought to be a Commitment by the Lords in Council?

Mr. S. Pemberton. Pray my Lord, spare us a little in this matter: Here has been the Clause of a Statute read to you, from whence Mr. Solicitor would conclude, that all Commitments by several sorts of Persons there named, are legal; or else the Enumeration of the several sorts of Commitments signifies nothing to this purpose. But I pray your Lordship would consider this, that the very scope and end of that Act of Parliament is, to relieve against illegal Commitments and Oppressions; then the several Commitments therein named, can never all be called legal; so that that signifies nothing to our purpose. My Lord, they tell us we stand upon Presumption, no, we do not so; we say your Lordship ought not to presume the One or the other, but to judge upon what is before you, but here is nothing before you but this Return of a Commitment of these Noble Persons, my Lord the Archbishop of *Canterbury*, and the rest of the Bishops, which is said to be by these particular Lords. Now if your Lordship will please to give us time to look into it, (for this is an Ex-ception

ception we take at the Bar upon hearing the Return read) we would shew the constant way has been quite otherwise than this Return makes it; therefore we desire leave to satisfy your Lordship concerning the usual Form of Precedents, and thereby it will appear, that it ought to have been, that they were committed by Order of the Privy Council, and then he should have set forth the Warrant it self, which would have shewn the Names of the Privy Councillours, and he needed not to have put their Names in the Return as the particular Persons that committed them; but now my Lord, this does not appear to be an Order made in Council, as it ought to be, and the Return is that which is before you, and you are to judge only upon what is before you.

L. C. Just. So we do.

Mr. Justice Allybone. Pray, Sir Robert Sawyer, would the Saying of a Governour of the Tower in his Return to a Writ of *Habeas Corpus* alter the Nature of the Commitment?

Mr. Att. Gen. My Lord, we are in your Lordship's Judgment.

Mr. Just. Allybone. I say, Brother Pemberton, would any collateral Saying of the Lieutenant of the Tower alter the Nature of the thing, his Return in this Case is only an Inducement to the Warrant of Commitment, and his saying one way or t'other would neither vitiate nor mend the Commitment.

Mr. Sol. Gen. Your Lordship cannot take Notice of the Commitment but from the Warrant.

Mr. Pollexfen. The Return is the Fact upon which you are to judge.

Mr. Just. Powel. Certainly we must judge of the Record, and nothing else, and the Return is the Record now, being filed.

L. C. Just.

26 *The Tryal of the Seven Bishops.*

L. C. Just. The Return is as certain, I think, as can be.

Mr. Soll. Gen. By the Return it appears, the Bishops were committed by the Warrant of such and such Lords of the Council, and that which is before you now is, whether you will not intend it to be done by them in Council.

Mr. Just. Powel. We can intend nothing, but must take the Return as 'tis.

L. C. Just. The Warrant is good enough, I think truly, and so is the Return.

Mr. Pollexfen. I think in all the *Habeas Corpus*'s that have been since the King's return, of Persons committed by the Council, the Returns have been quite otherwise than this Return is; we do all pretty well agree (for ought I can perceive) in these two things; we do not deny but the Council Board has Power to commit, they on the other side do not affirm, that the Lords of the Council can commit out of Council.

Mr. Att. Gen. Yes, they may, as Justices of the Peace.

Mr. Pollexfen. That is not pretended to be so here.

L. C. Just. No, no, that is not the Case.

Mr. Pollexfen. Then, my Lord, with Submission, I will compare it to any thing else of this Nature. I deny not but that the Council may commit, but the Question is, whether this Return of their Commitment be right; Suppose there should be a Return to a *Habeas Corpus*, that such a one was committed by Sir Robert Wright, and three others by Name, Justices of this Court, for a *Contempt*, without saying, that it was done in Court, this would be an ill Return; although they had power in Court to commit for a *Contempt*, yet it must appear, that it was done in Court, or it cannot be a
good

good Return. If I had thought or foreseen that such a Return would have been made, I could easily have made out our Objection, but we could not foretell what they would return, and therefore we can only make this Objection now upon the hearing of it read. In all the Debates that have been heretofore in the Great Case of the *Habeas Corpus* concerning my Lord *Hollis*, and those other Gentlemen who were in Prison upon Commitments by the Privy Council, the Returns are, that they were committed by Order of the Privy Council, as near as I can remember; I will not take it upon me to be positive in it, but I believe if your Lordship thought fit to give us a short time to look into it, we should be plainly able to shew you, that all the Returns of Commitments of this Nature, are said to be by Order of the Council-Board, and never any of them naming the Lords, for that may be true, and yet not a Legal Commitment.

L. C. Just. I have seen several Precedents of Commitments in this Form, and if you make no Exception to the Warrant, you can make no Exception to the Return, because that only sets forth the Warrant.

Mr. Pollexfen. The Commitment you are to judge of, is upon the Return, with Submission, and supposing the Warrant to be right and good, yet the Return is not Legal.

Mr. Att. Gen. We say, in common Understanding, it cannot be but a Commitment in Council.

Mr. S. Pemberton. But *common Understanding* and *legal Understanding* are two things, and we pray the Judgment of the Court.

Mr. Soll. Gen. And so do we, my Lord, and pray your Rule in it.

Mr.

28 *The Tryal of the Seven Bishops.*

Mr. Just. Allibone. You may by the same Reason say, that upon all Commitments by Warrant from Justices of the Peace, that the Commitment was out of the County, if the Party does not alledge in the Warrant or Return, that the Commitment was in the County. 'Tis an Objection that would put us upon presuming, what we have no reason to presume.

L. C. Just. If you would have our Opinions, let my Brothers declare theirs, I will soon tell you my Mind.

Mr. J. Holloway. Pray let the Return be read again. (*Which was done.*)

Mr. Att. Gen. So that the Return says, they were committed by vertue of a Warrant of such and such by Name, *Lords* of the Council; and whether this be a Warrant of the Council is the Question, and we think it is plain enough that 'tis a good Return.

Mr. J. Powell. I have given you my thoughts already, I think we ought to consult Precedents in a Case of this Weight and Nature; and truly I will not take upon me to say whether it be a good Return or not a good Return, without looking into Precedents.

Mr. J. Allybone. For my own part, it does not stick at all with me, for the Reasons I gave before. When any Man that has an Authority to *commit*, does commit a Person to an inferior Officer, and that Officer has an *Habeas Corpus* brought to him, it is enough for him to return his Warrant, by which the Party was committed, and whatsoever he says by the bye, cannot have any Influence one way or other to alter the Nature of the thing. Now unless you would make every Man that is a Justice of the Peace write his Name and stile himself Justice of the Peace, this must be a good Commitment.

ment. Every Commitment shall be presumed to be pursuant to the Power of the Person *committing*; and I am sure, take these Lords separately, and they had no Power *to commit*, and consequently such a Warrant would be no Authority to the Lieutenant of the Tower to receive them: But when they send such a Warrant as this, we shall presume it to be according to the Power they have, and not according to the Power they have not; this Warrant is returned by the Officer, and I cannot but presume that it is all very well.

Mr. Just. Holloway. My Lords, I am very desirous and willing your Lordships should have all the Right and Justice done you that can be, and by the Grace of God, I will endeavour it all I can: I see in this *Case* it is agreed on both sides, that the Council have a power *to commit*, and the Commitment is here certified in the words of the Warrant, and the Lieutenant has made his Return, that they were committed by vertue of this Warrant; If the Lieutenant of the Tower had returned any other Commitment, you would have blamed him for a false Return; but now you find fault with his Return, because he does not say, the Warrant was made by the Lords of the Council, and in Council; That is a thing so notoriously known to all the Kingdom, that my Lords were sent to the Tower by the Council, that no Body doubts it; and being thus sent by this Warrant, I do not see but that this is a very good Return, and my Judgment is, that the Information ought to be read.

L. C. Just. I told you in the beginning, after you had made your Objections, that I thought it was as all other Returns are, and I am of the same Opinion still, I find no Fault with the Warrant, nor with the Return.

Mr.

30 *The Tryal of the Seven Bishops.*

Mr. S. Pemberton. There is no Objection to the Warrant at present upon this Question.

L. C. Just. Neither do I take upon me to say any thing, nor is there any thing now to be spoken of touching the Fact for which these Noble Lords were committed.

Mr. Att. Gen. We pray, my Lord, the Information may be read.

Mr. Just. Holloway. There is no question about the Fact, but whether this be a good Return which is here made, that they were committed by such and such Lords of the Council.

L. C. Just. I would do as much to give my Lords the Bishops ease, and set them at Liberty, as I could possibly by Law, but we must not break the Rules of Law for any one.

Mr. Sol. Gen. Pray read the Information.

Mr. Finch. No, my Lord, we oppose the reading of it.

Mr. Sol. Gen. Why, will not you be satisfied with the Opinion of the Court?

Mr. Finch. We have another thing to offer, which we must have the Opinion of the Court in, before this Information can be read.

Mr. Att. Gen. Pray let us hear it what it is?

Mr. Finch. My Lord, we did humbly offer one Objection more to your Lordship against the reading of the Information; the former Objection was concerning the Persons committing, in that it does not sufficiently appear upon the Return that they were committed by the Lords in Council; the Court have given their Opinion in that. But the other Objection still remains, whether they ought to have been committed at all, and therefore when they now appear upon this *Habeas Corpus*, we say, they were not legally committed to Prison, because

a Peer ought not to be committed to Prison in the first Instance for Misdemeanour.

Mr. Soll. Gen. If you please you may speak to that by and by, but that is not proper now for you to offer, or for the Court to determine, whether a Peer may be committed upon an Accusation for a Misdemeanour.

Mr. Finch. With Submission, that is such a Difficulty that lies in the way against the reading of the Information, that you must get over it, before you can come at the reading of it.

Mr. Att. Gen. You will have your time for all this Matter by and by, but certainly you cannot be admitted to it yet.

L. C. J. Truly I think you are too early with that Exception.

Mr. Finch. With Submission, we think this is the proper time, and I will tell your Lordship the Reason why.

L. C. J. *Mr. Finch*, certainly every thing in the World, that can be said, you will say for your Client, and you shall be heard; for we are very willing to deliver these noble Lords, if we can, by Law, and if the Exceptions you make be legal.

Mr. Finch. My Lord, we do not doubt your Justice, and therefore we desire to offer what we have to say in this Point; the only Question (now it seems) is about our time of making our Exception. *Mr. Attorney* (we apprehend) did say one thing which was certainly a little too large, That however any Man comes into Court, if the Court find him here, they may charge him with an Information.

Mr. Att. Gen. Who says so? I said no such thing.

Mr. Finch. Then I acquit *Mr. Attorney* of it, he did not say so: Then both he and I agree the Law to be, That a Man that does come into Court, if he

§ 2 *The Tryal of the Seven Bishops.*

he does not come in by legal Process, he is not to be charg'd with an Information. Then since we do agree in that Proposition, certainly we must be heard to this Point, Whether we are here upon legal Process, before you can charge us with this Information?

Mr. Att. Gen. You think you have said a fine thing now, and take upon you an Authority to make me agree to what you please.

Mr. Finch. Certainly the Consequence is plain upon your own Premises.

Mr. Att. Gen. Do you undertake to speak for me?

Mr. Finch. I am in the Judgment of the Court, and to them I leave it.

Mr. Att. Gen. I know you thought you had got an extraordinary Advantage, by making me say what you please; but there has been very little said, but what has been grounded upon Mistakes all along. This is that I do say; If a Man comes in voluntarily upon any Recognizance, though he be not in Custody; or if he comes in upon any Process, if the Court find him here, though that Process be not for the thing charged in the Information, yet the Court is so much in Possession of the Person, that he shall plead to any Information; and that I do say, and will stand by.

Mr. Soll. Gen. My Lord, we are here in a very great Auditory, and this Court is always a very great Court, (but here is a greater and nobler Assembly than usually we have here) and these Gentlemen, to shew their Eloquence and Oratory, would, by converting Propositions otherwise than they are delivered, put another Meaning upon them, and so draw strange Inferences from them: But these Arts we are sure will not prevail here; we say plainly, and we are sure the Law is so,
(let

(let them apprehend what they will) that your Lordship cannot exhibit an Information to any Man that you find accidentally here in Court. Then says Mr. *Finch*, we are agreed; but withal (say I) take my other Proposition; If a Person be brought into Court by legal Process, or upon any Contempt whatsoever, by an Attachment, or Warrant, or upon a *Habeas Corpus* after a Commitment, being thus found in Court, your Lordship may certainly charge him with an Information. When these Gentlemen, who are so eager on the other side, did preside here, and stood in the Places where Mr. *Attorney* and I now are, I can name them abundance of Cases of the like Nature with this, when Men have been compelled to appear to Informations, and plead presently; they are the Persons that made the Precedents; they made the Law, for ought I know: I'm sure I find the Court in possession of this as Law, and we pray the usual Course may be followed.

Mr. *Finch*. Pray, my Lord, spare us a Word in this Matter: I do agree with Mr. *Attorney* in this Matter, but I do not agree with Mr. *Solicitor*.

Mr. *Soll. Gen.* You do not agree with your self.

Mr. *Finch*. I hope I do, and always shall agree with my self; but I do not agree with you, Mr. *Solicitor*.

Mr. *Soll. Gen.* You do not in 1688 agree with what you were in 1680.

Mr. *Finch*. Says Mr. *Attorney*, A Man that comes voluntarily in, cannot be charged with an Information; with him I agree. Says Mr. *Solicitor*, A Man that comes in, and is found in Court by any Process, may be charg'd with an Information: I say No, if the Process be wholly illegal, for he cannot be said to be legally in Court. Suppose a Peer of the Realm be taken upon a *Capias*, and is

34 *The Tryal of the Seven Bishops.*

committed to the *Marshalsea*, and is brought up upon a *Habeas Corpus*, I would fain know whether you could declare against him?

Mr. Att. Gen. No, we cannot.

Mr. Finch. And why is that, but because the Process is illegal, and he is not truly in Court? Then is it a proper time now to make this a Question, Whether my Lords here were legally committed, before you can lay any thing to their Charge by way of Information? For if the Commitment be illegal, it is a void Commitment; and if the Commitment be void, the Process is void, and then my Lords are not legally in Court.

L. C. J. That sure is but returning again to the same Question that has been determined already.

Mr. Soll. Gen. If your Lordship will permit them to go over and over the same things, we shall never have an end.

Mr. Finch. My Lord, we pray these Gentlemen of the KING's Council may be a little cool with us, and then they will find we do not talk the same things over and over again, nor meddle with that which the Court have given their Judgment in.

L. C. J. Well, go on, Sir.

Mr. Finch. My Lord, we say it is the Privilege of the Peers of *England*, that none of them shall be committed to Prison for a Misdemeanour, especially in the first Instance, and before Judgment; this (we say) is the Right of my Lords the *Bishops*, and that which they claim as Lords of *Parliament*. Now it appears upon this Return and the Warrant, that the Council-Table hath committed them, (for your Lordship and the Court hath rul'd it, that this Commitment must be taken to be by Order of the Privy-Council, and we meddle not with that further) but we say that the Council-Table may commit a Man unjustly, that is certain:

tain: There has been relief often given in this Court against Commitments by the Council-Table: And that they were unjustly Committed, depends upon that point of their Privilege as Peers.

Mr. S. Pemberton. My Lord, we say, that the Lords of the Council have Illegally Committed these Noble Persons, who are Peers of the Realm, and ought to have the privilege of their Peerage, which is not to be Committed for a Misdemeanour; that the Council ought not to have done: For the Peers of *England* ought no more to be Committed for a Misdemeanour, and to be Imprisoned, especially upon the first Process, than they may be in a case of Debt. It is true, in the case of Treason, Felony, or the Breach of the Peace, the Peers have not such a Privilege; they may be Committed; but for a bare Misdemeanour (as this does appear to be in the Warrant of Commitment) they ought not to be Committed; but they were Committed by the Lords of the Council, and we now complain of this to your Lordship as Illegal, and therefore pray my Lords may be discharged.

Sir Robert Sawyer. Will your Lordship be pleased to favour me a Word on the same side for my Lords the *Bishops*. It must be agreed to me, that if a Peer be brought into Court, as taken by a *Capias*, he cannot be charged with a *Declaration*; and the reason is, because the *Process* is Illegal: Then, my Lord, with submission, when a Peer comes upon a Foreign Commitment, and is brought in Custody upon a *Habeas Corpus*, this is either in the Nature of a *Process*, or a final Commitment, as a Judgment; they will not say, that this is a good Commitment so as to amount to a Judgment; for the Council-Board could not give a

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Judgment in the Case; besides, the Commitment is Illegal because it is not a Commitment till they find security to answer an Information here, but 'tis a Warrant to keep them for a Misdemeanour; besides, there is another thing we have to say to this Warrant, (for I am making Objections against the Validity of this Commitment) it does not appear that there was any Oath made, and therefore the Court must adjudge that there was no Oath made, and then no Man ought without an Oath to be Committed, much less a Peer; but that which we chiefly rely upon, is, That my Lords ought not to have been Committed for this, which is but a Misdemeanour at most: And if they use it, as *Process* to bring my Lords the *Bishops* to answer an Information, we say, By Law no such *Process* can be taken out against the Persons of Peers for bare Misdemeanours. I do agree, that for Felony, Treason, or Surety of the Peace, the Persons of Peers may be Committed; and that which is called Surety of the Peace in our Books, Mr. *Solicitor* knows very well, in some of the Rolls of Parliament, is called Breach of the Peace, but it is all one; and the meaning, in short, is, That it is such a Breach of the Peace, as for which a Man by Law may be obliged to find Sureties for the Peace. If it should mean a Breach of the Peace by implication, as all Trespases and Misdemeanours are said to be *Contra Pacem* in the Indictment or Information, then it were a simple thing to enumerate the Cases wherein Privileges did not lie; for there could be no Information whatsoever, but must be *Contra Pacem*, and so there could be no such thing as Privilege at all: And besides, we say, the very Course of this Court is contrary to what they would have; for in the Case of a Peer, for a Misdemeanour, you go first by Summons, and then you do not take out a *Capias*

pias as against a common Person, but the next Process is a *Distringas*, and so *ad Infinitum*; and I do appeal to them on the other side, and Challenge them to shew any one Precedent, when a Peer was brought thus into Court, to be charged with an Information, without it were in the Case of an apparent Breach of the Peace, for he must be charged in Custody, and there must be a *Committitur* to the Marshal, to intitle the Court to proceed; your Lordship will find very few Precedents of Cases of this Nature about common Persons, for till within these 14 or 15 Years there was no such thing ever done against a common Person; But this was the Rule; first there went out a *Subpœna*, and then an Attachment, and when the Party was taken upon the Attachment, he is taken to come in upon Process, and then the Court would charge him presently; but if he did appear upon the Summons, they would not charge him, but he had time to take a Copy of the Information, and an Impar lance of Course, till the next Term, before he could be compelled to Plead. But in the Case of a Peer, there never was any such Precedent, as the Attaching his Person, but only a Summons and Distress; and I would be glad the KING's Council would shew that ever there was any such process taken out against the Person of a Peer, for a meer Misdemeanour. My Lord, 'tis plain, what Breach of the Peace means in every Information, and I only speak this to acquaint the Court how the constant Proceedings in all these cases have been. These Informations were anciently more frequent in the Star-Chamber; and what was the Process there? Not the common Process of a *Subpœna*, that was not the course there; but the Process was a Letter from the Chancellor, that if the Party upon that Letter did not appear, in a common Case there went out an Attachment; but in a Peers Case,

never; and so it appears by *Cromptons Jurisdiction of Courts. Tit. Star-Chamber 33.* This appears likewise by the Proceedings in Chancery against the Peers, till the Queens time, they did not so much as take out an Attachment after default upon a *Sub-pœna*, but they would then in the Queens time, be so bold as to take out an Attachment against a Lord for not appearing; but that Course was condemned as illegal; so we find in my Lord *Dyer*.

Mr. Att. Gen. That was at a common Persons Suit.

Sir Robert Sawyer. But the proceedings in the Star-Chamber were at the King's Suit, and I am sure *Mr. Solicitor* knows that the Peers privileges reach to Informations, but as I was saying, it was so adjudged as to the Chancery in my Lord *Cromwel's Case. xiiii Eliz. Dyer, 315.*

L. Ch. Just. You take a great compass, *Sir Robert Sawyer*, but pray remember what you laid down at first, for the Ground of your discourse. That there was never any Commitment of a Peer for a bare Misdemeanour, you must keep to that, that is the Point you are to look after.

Sir Robert Sawyer. My Lord I will so, I do not cite these Cases but for this purpose, to shew, that in all Courts the Peers have particular Privileges, and I am sure they can produce you no Precedents for any such proceedings against a Peer; in my Experience of these matters, I never knew any such; nay, I knew it always to be otherwise, That in Informations for Misdemeanours, there did never issue out a *Capias* against a Peer; and *Mr. Attorney* knows very well, it was so in the late Case of my Lord *Lovelace*; for that Case of my Lord *Devonshire*, that was an express Breach of the Peace, tho' it was debated and disputed then; so that I take it, these Noble Lords cannot be charged with
this

this Information, because they do not come in by legal Process; and unless they can shew me any Case, where a Peer did ever come in upon such a Commitment, and answered to an Information upon that Commitment, it must certainly be allowed not to be the legal Course; though if such a Precedent could be shewn, that past *sub Silentio*, without Debate or solemn Determination, that would not do, nor could bind the rest of the Peers. If one Man would lose a particular Benefit he has, all the whole Body must not lose it; and the Benefit is not small, of Time to make his Defence, of Imparling, of taking a Copy of the Indictment, and preparing himself to plead as his Case will bear; and indeed a common Person has used to have these Privileges, though in some Cases of late they have taken the other Course; and if a *Capias* went out (which we say cannot go against a Lord) and the Party were brought in, he was to answer immediately. Now, my Lord, I take it, that the Privileges of Peers is in all times the same with the Parliamentary Privilege in Parliament time, which reacheth to Informations, as well as other Actions. My Lord *Cooke* is express in this Point in the 4 *Inst.* 25. If that Objection should hold good, that every Information being *Contra Pacem*, that should be a Breach of the Peace, then (as I said before) Privilege will hold in no Information, which is contrary to that and all our other Books; 'tis only such a Breach of the Peace, as for which Secularity of the Peace may be required. But further, that this is a Privilege enjoyed by the Peers Spiritual as well as Temporal, I suppose will not be denied; for I think they will not question, but that the Bishops and Abbots that were Lords of Parliament were Peers; and we find in our Books, when the Court has been moved for a *Capias* against an

Abbot, if he were a Mitred Abbot, and sat in the Lords House, it was always said that no such *Process* ought to go; and so it is in the Case of *Bishops*; but indeed for other Noble Men, the Difference is this, Where it does not appear upon Record that they are Lords of Parliament, there the Courts have put them to bring their Writs of Privilege; but where it does appear upon Record that they are Peers, the Court is to allow and take notice of their Privilege, and there needs no such Writ. Now that the Parliament Privilege, and the Privilege of Peers (as to their Persons) is the same, appears by the Form of the Writ in the *Register*, fol. 287. *Fitz. Herb. Nat. Brev.* 247. The Words of the Writ are these, That if such a one be sued at the Suit of another, the Writ commands, that a Peer out of Parliament time should have the same Privilege with those summoned by the K I N G to the Parliament; and I know not any Difference that can be put between them; and it cannot be denied, that all Informations whatsoever, unless such as are for Breaches of the Peace, for which Surety of the Peace may be required, are under the Controul of the Parliament Privilege; so that upon these Grounds I do press that my Lords the *Bishops* may be discharged: If there be any Information against us, we are ready to enter our Appearance to answer it according to the Course of the Court; but if the Information be for no other thing than what is contained in the Warrant of Commitment, then their Persons ought to be privileged from Commitment.

Mr. Pollexfen. If your Lordship please to take it all together, you will find it a Case very well worth your Consideration, it being the Case of all the Peerage of *England*.

Mr.

Mr. Att. Gen. My Lord, these Gentlemen have taken a great deal of Liberty, and spent much of your time in making long Arguments, and after all, truly I do not know where to have them, nor can understand what they would be at; it seems they agree that for Treason, Felony, and Breach of the Peace, a Peer may be committed.

L. C. J. That is (say they) such a Breach of the Peace, as for which Surety of the Peace may be required.

Mr. Att. Gen. Then all the Learning they have been pleased to favour us with is at an end; for if here be any thing charged upon the *Bishops* for which Sureties of the Peace may be required, then this is a good Commitment.

L. C. J. That they must agree upon their own Arguments.

Mr. Att. Gen. Can then any Man in the World say, that a Libel does not require Sureties of the Peace? for we must now take it as it is here upon this Return. How my Lords the Bishops will clear themselves of it, is a Question for another time; but the Warrant says they were committed for contriving, framing, and publishing a Seditious Libel against His *Majesty* and His Government; Is there a greater Misdemeanour? or is there any thing on this Side a capital Crime that is a greater Offence? Is there any thing that does so tread upon the Heels of a capital Offence, and comes so near the greatest of Crimes that can be committed against the Government? Not to enlarge at this time upon what the Consequences of such things may be, is there a greater Breach of the Peace than such seditious Practices? No doubt, any Man may be committed for it, and may be bound to find Sureties for his good Behaviour.

Sir

42 *The Tryal of the Seven Bishops.*

Sir Rob. Sawyer. I say Sureties of the Peace, not of the good Behaviour.

Mr. Soll. Gen. Pray, my Lord, would you consider where we are, we are going towards *France*, I think, or some farther Country; they have set us out to Sea, and I do not see, after this rate, when we shall come to Land; certainly these Gentlemen are mightily out of the way, and would fain have us so too. We are here upon a single Question, as this Case stands before your Lordship, upon the Return. Here is a Libel, a seditious Libel, said to be contrived, made, and published against the KING and His Government, by these noble Lords the Prisoners; this is the Accusation. Suppose this be true (that is to be proved hereafter; I hope they are innocent, and will prove themselves so;) but suppose it to be true, that they have made a seditious Libel against the King and His Government, will any Man say that this is not done *Vi & Armis*? This is a Libel with a Witness; nay, two or three Degrees more may carry it to High-Treason; and all the Informations that were exhibited by Sir Robert Sawyer, when he was *Attorney-General* (and he exhibited a great many for Libels) constantly these Words were in *Vi & Armis & contra Pacem*.

Bish. of Peterb. Was it so in your own Case, Mr. Solicitor?

Mr. Soll. Gen. Yes, it was so in my Case, and you were one of them that prosecuted me, for ought I know; or if you did not prosecute me, you preached against me; or if you did not, some of your Tribe did: But so, my Lord, it was in many other Cases within time of Memory. Sir Robert Sawyer has paid a Compliment upon me of my great Skill in Parliament Matters; but truly
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there needs no great Skill in Matters where the Law is so plain. A Peer, they agree, may be in Prison for Treason, Felony, or Breach of the Peace; but that Breach of the Peace (say they) is where the Law requires Sureties of the Peace; but is there any Certainty where Sureties of the Peace shall be required, and where not? Then I would put this Case, These Lords have contrived and published a seditious Libel against the *King* and His Government; and whether this be not such a Breach of the Peace as will require Sureties of the Peace, is the Question before you: And it plainly appears to be so in Sir *Baptist Hick's* Case, in *Hobbart*. If a Man write a private Letter, provoking another to fight, although there be no fighting, this is a Breach of the Peace. Now a Letter can do no Wrong in that kind, but as it incites and stirs up to fighting, which may occasion Bloodshed: And I think there cannot be a greater Breach of the Peace, than for a Man to come to the *King's* Face, and publish a Libel against him; and yet, according to their Doctrine, this Man shall go away, and you shall not take him up, but take a *Subpœna* against him, and wait for the Delay of all the ordinary Process. And they tell you another thing, that a *Capias* does not lie upon an Information against the Person of a Peer, and that there is no Precedent of any such thing; but I would pray them to remember the Case of my Lord *Lovelace*, about some three Years ago, for breaking a Foot-man's Head: It seems, if a Man libels the *King* in His own Presence, that is not so great a Matter, as a little Correction to an insolent Foot-man; but there he was bound in a Recognizance to appear here in this Court, and accordingly he did appear, and was charged with an Information; and as to that Precedent I do believe Sir *Robert Sawyer* and

44 *The Tryal of the Seven Bishops.*

and Mr. *Finch* won't contradict me; this was in the first Year of this *King*. There was likewise my Lord of *Pembroke's* Case, who went to a disorderly House, and there frightened some People, and we moved the Court, and had an Attachment against him for a Misdemeanour, and he was glad to compound the thing, or it had not ended so soon as it did; and yet if a Lord comes to the *King's* Person, and affronts him to His very Face, will not an Attachment lie against him for it? Certainly it will. My Lord, we have gone out of the way too much already, and these Gentlemen will lead us farther, but we hope your Lordship will reduce us to the Methods of the Law. Here is an Information which we desire may be read, if they have any thing to plead to it, their time for that will come after it is read. If they think they have been illegally imprison'd, it appears plainly upon this Return who they were that did commit them; here are a great many noble Lords to answer an Action of false Imprisonment, if these Lords think fit, and may have these learned Gentlemen, that are very well able to advise them what they should do in it.

Sir Rob. Sawyer. We pray your Lordship's Judgment, whether the Cases put by Mr. *Solicitor* are like our Case.

Mr. Soll. Gen. They are as like, as *Sir Robert Sawyer* is to Mr. *Attorney* that was.

Sir Rob. Sawyer. Those Cases are of apparent Breaches of the Peace, so likewise was my Lord of *Devonshire's* Case, but certainly that was not at all like this.

Mr. Finch. With your Lordship's Favour I would add but one Word, and I would repeat nothing of what has been said; all that I shall say is this, There is a great deal of Difference between an actual

Actual Breach of the Peace, and that which in the bare Form of an Information is a Breach of the Peace by Construction of Law, it being *contra pacem*: Suppose it be laid that a Man did *vi & armis* speak Words, will that make the Words a Breach of the Peace?

Mr. Soll. Gen. It must be *vi & armis*, and certainly is a Breach of the Peace.

Mr. Finch. If a Man write a Petition, are the Pen and Ink that he uses the Arms?

Mr. Soll. Gen. My Lord, I hope *Mr. Finch* remembers what I heard him say in *Algernoon Sidney's* Case, *scribere est agere*.

Mr. Finch. I think it is so, *Mr. Solicitor*, but every Action is not a Breach of the Peace.

L. C. J. Well, let my Brothers deliver their Opinions, I will give you mine.

Mr. J. Allynbone. The single Question now is, Whether or no that which *Mr. Solicitor* was pleased to name as the Crime, and lay it to the Charge of my Lords the Bishops, that is a seditious Libel, be a Breach of the Peace: I do confess that there is little of Argument to be drawn from Forms of Indictments; and I shall put no great Stress upon the Words *vi & armis*, where the Fact will not come near it; but if a Commitment may ensue, (as they seem to agree) wherever Surety of the Peace should be required, nothing seems more important to me, than that Surety of the Peace should be required, where there is any thing of Sedition in the Case; and wherever there is a seditious Act, I cannot tell how to make any other Construction of it, but that it is an actual Breach of the Peace, that is my Opinion.

Mr. J. Powell. I am of the same Opinion in this Point too, as I was in the other Point before: It was a Matter of great Consequence (I thought)
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upon the former Point, but now it appears to me to be of far greater Consequence than it did at first; for here, all the Great, High, and Noble Peers of *England* are concerned in it as to their Privilege. Our Predecessors in this Court heretofore would not determine the Privileges of the Peers, but left them to themselves to make what Judgment they pleased of them. I think truly 'tis a thing of that Weight, that it may be very fit for the Court to take time to consider of it; and I declare for my own part, I will not take upon me to deliver any Opinion in a Matter of this Consequence, before I have consulted all the Books that can give me any Light in the Case.

Mr. J. Allybone. Brother *Powell*, I am not determining, limiting, or cramping the Privilege of Peers, but I am only considering whether or no a seditious Libel be a Breach of the Peace; 'tis agreed to be on all hands a Breach of the Peace. Is there any thing that will require Sureties of the Peace to be given upon the doing of it? For there *Sir Robert Sawyer* has laid the Foundation of his Distinction; and if that shall draw any Person under a Commitment, then, say I, in my Judgment, wherever there is a seditious Libel, there is that which is an actual Breach of the Peace; for I am sure, there is that which is sufficient to require Sureties of the Peace. I controvert not the Right of the Peers one way or other, but only declare my Opinion, That this is a Fact that comes within the Rule laid down by them, That what will require Sureties of the Peace, is a Breach of the Peace.

Mr. J. Holloway. God forbid that in a Case of this Nature, any one should take upon him here to say, that every Misdemeanour were a Breach of the Peace, I say not so; but certainly there are some such Misdemeanours as are Breaches of the Peace; and if here be such a Misdemeanour before

fore us, then it is acknowledged that even in Parliament time a privileged Person might be committed for it; for in Treason, Felony, and Breach of the Peace, Privilege does not hold. I will not take upon me (as my Brother said) to determine concerning the Privilege of the Peers; it is not of our Cognizance, nor have we any thing to do, either to enlarge or confine Privilege; nor do we determine whether this be such a Libel as is charged in the Information, that will come in question another time; but certainly, as this Case is, the Information ought to be read, and my Lords ought to appear and plead to it.

L. C. J. Certainly we are all of us here as tender of the Privileges of Peers as any in the World can be, and as tender as we would be, and ought to be, in trying any Man's Right: It becomes us to do it with great Respect and Regard to my Lords the *Bishops*; and therefore I would be as careful (if that were the Question before me) to consider very well, before I give my Opinion, as ever I was in my Life. But when I see there can come no Mischief at all to the Privileges of the Peers, by what is agreed on all hands, I think I may very justly give my Opinion; for here is the Question, Whether the Fact charged in the Warrant, be such a Misdemeanour as is a Breach of the Peace? and the Words of the Warrant (which is now upon the Record) being such as have been recited, I cannot but think it is such a Misdemeanour as would have required Sureties of the Peace, and if Sureties were not given, a Commitment might follow; and therefore I think the Information must be read.

Mr. Att. Gen. We pray the *Clerk* may read it.

Clerk

Clerk reads. Middlesex ff. Memorand. That Sir Thomas Powys, Knight, Attorney General of our Lord the KING, who for our said Lord the KING, in this Behalf, sues, comes in his own Person here into the Court of our said Lord the KING, before the KING Himself, at *Westminster*, on Friday next, after the Morrow of the *Holy Trinity* in this Term; and for our said Lord the KING, gives the Court here to understand and be informed, that our said Sovereign Lord the KING, out of His signal Clemency —

Mr. Soll. Gen. Read it as it is in *Latin*.

Bish. of Peterborough. My Lord, we desire it may be read in *English*, for we don't understand *Law-Latin*.

Mr. Soll. Gen. No, my Lords the *Bishops* are very learned Men (we all know) pray read it in *Latin*.

Clerk reads. Memorandum, Quod Thomas Powys, Miles, Attornatus Domini Regis nunc Generalis, qui pro eodem Domino Rege in hac parte sequitur, in propria Persona sua venit hic in Curia dicti Domini Regis coram ipso Rege apud Westmonasterium, Die Veneris proxime post crastinum Sanctæ Trinitatis, isto eodem Termino, & pro eodem Domino Rege. Dat Curia hic intelligi & informari, quod dictus Dominus Rex, nunc ex insigni Clementia & benigna Intentione suis erga Subditos suos Regni sui Angliæ, per Regiam suam Prærogativam, quarto Die Aprilis, Anno Regni Dicti Domini Regis nunc Tertio, apud
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*Westmonasterium in Comitatu Middlesexiae,
Declarationem suam Intitulatam, His Maje-
sty's Gracious Declaration to all His Lo-
ving Subjects for Liberty of Conscience,
gerentem Datum eisdem Die & Anno, Mag-
no Sigillo suo Angliæ Sigillatim publicavit;
in qua quidem Declaratione continetur,*

J A M E S R.

IT having pleased Almighty GOD, not only to bring Us to the Imperial Crowns of these Kingdoms through the greatest Difficulties, but to preserve Us by a more than ordinary Providence upon the Throne of Our Royal Ancestors; there is nothing now that We so earnestly desire, as to establish Our Government on such a Foundation as may make our Subjects happy, and unite them to Us by Inclination as well as Duty; which We think can be done by no Means so effectually, as by granting to them the free Exercise of their Religion for the time to come, and add that to the perfect Enjoyment of their Property, which has never been in any case invaded by Us since our coming to the Crown; which being the two things Men value most, shall ever be preserved in these Kingdoms, during Our Reign over them, as the truest Methods of their Peace and Our Glory. We cannot but heartily wish, as it will easily be believed, that all the People of Our Dominions were Members of the *Catholick* Church; yet, We humbly thank Almighty GOD, it is, and hath of long time been Our constant Sense and Opinion (which upon diverse Occasions We have declared) that

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50 *The Tryal of the Seven Bishops.*

Conscience ought not to be constrained, nor People forced in Matters of meer Religion. It has ever been directly contrary to Our Inclination, as We think it is to the Interest of Government which it destroys, by spoiling Trade, depopulating Countries, and discouraging Strangers; and finally, that it never obtained the End for which it was employed. And in this We are the more confirmed by the Reflections We have made upon the Conduct of the four last Reigns; for after all the frequent and pressing Endeavours that were used in each of them, to reduce this Kingdom to an exact Conformity in Religion, it is visible the Success has not answered the Desigh, and that the Difficulty is invincible. We therefore, out of Our Princely Care and Affection unto all Our loving Subjects, that they may live at Ease and Quier, and for the Increase of Trade, and Encouragement of Strangers, have thought fit, by Vertue of Our Royal Prerogative, to issue forth this Our Declaration of Indulgence, making no doubt of the Concurrence of Our two Houses of Parliament, when We shall think it convenient for them to meet. In the first place We do declare, that We will protect and maintain Our Archbishops, Bishops, and Clergy, and all other Our Subjects of the Church of *England*, in the free Exercise of their Religion, as by Law established, and in the quiet and full Enjoyment of all their Possessions, without any Molestation or Disturbance whatsoever. We do likewise declare that it is Our Royal Will and Pleasure, that from henceforth the Execution of all and all Manner of *Penal Laws* in Matters Ecclesiastical, for not complying to Church, or not receiving the Sacrament, or for any other Non-conformity to the Religion established, or for or by reason of the Exercise of
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Religion in any manner whatsoever, be immediately suspended, and the further Execution of the said *Penal Laws*, and every of them, is hereby suspended. And to the end that by the Liberty hereby granted, the Peace and Security of Our Government, in the Practice thereof, may not be endangered, We have thought fit, and do hereby streightly charge and command all Our loving Subjects, that as We do freely give them leave to meet and serve God after their own way and manner, be it in private Houses, or Places purposely hired or built for that use, so that they take especial Care that nothing be preach'd or taught amongst them which may any ways tend to alienate the Hearts of Our People from Us or Our Government, and that their Meetings and Assemblies be peaceably, openly, and publickly held, and all Persons freely admitted to them; and that they do signifie and make known to some one or more of the next Justices of the Peace, what Place or Places they set apart for those uses. And that all Our Subjects may enjoy such their Religious Assemblies with greater Assurance and Protection, We have thought it requisite, and do hereby command, that no Disturbance of any kind be made or given unto them, under Pain of Our Displeasure, and to be further proceeded against with the utmost Severity. And forasmuch as We are desirous to have the Benefit of the Service of all Our loving Subjects, which by the Law of Nature is inseparably annexed to and inherent in Our Royal Person. and that none of Our Subjects may for the future be under any Discouragement or Disability (who are otherwise well inclined and fit to serve Us) by reason of some Oaths or Tests that have been usually administered on such Occasions, We do hereby further

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declare, That it is our Royal Will and Pleasure, that the Oaths commonly called the Oaths of Supremacy and Allegiance, and also the several Tests and Declarations mentioned in the Acts of Parliament made in the 25th and 30th Years of the Reign of Our late Royal Brother King *Charles the Second*, shall not at any time hereafter be required to be taken, declared, or subscribed by any Person or Persons whatsoever, who is or shall be employed in any Office or Place of Trust, either Civil or Military, under Us, or in Our Government. And We do further declare it to be Our Pleasure and Intention from time to time hereafter, to grant Our Royal Dispensations under Our Great Seal to all Our loving Subjects so to be employed, who shall not take the said Oaths, or subscribe or declare the said Tests or Declarations in the above-mentioned Acts, and every of them. And to the end that all Our loving Subjects may receive and enjoy the full Benefit and Advantage of Our Gracious Indulgence hereby intended, and may be acquitted and discharged from all Pains, Penalties, Forfeitures, and Disabilities by them or any of them incurred or forfeited, or which they shall or may at any time hereafter be liable to, for or by reason of their Non-conformity, or the Exercise of their Religion, and from all Suits, Troubles, or Disturbances for the same, We do hereby give Our free and ample Pardon unto all Non-conformists, Recusants, and other Our loving Subjects for all Crimes and Things by them committed or done contrary to the Penal Laws formerly made relating to Religion, and the Profession or Exercise thereof; hereby declaring that this Our Royal Pardon and Indemnity shall be as good and effectual to all Intents and Purposes, as if every individual

The Tryal of the Seven Bishops. 53

dividual Person had been therein particularly named, or had particular Pardons under Our Great Seal, which We do likewise declare shall from time to time be granted unto any Person or Persons desiring the same; willing and requiring Our Judges, Justices, and other Officers, to take notice of and obey Our Royal Will and Pleasure herein before declared. And although the Freedom and Assurance We have hereby given in relation to Religion and Property, might be sufficient to remove from the Minds of Our loving Subjects all Fears and Jealousies in relation to either; yet We have thought fit further to declare, That We will maintain them in all their Properties and Possessions, as well of Church and Abby-Lands, as in any other their Lands and Property whatsoever.

Et idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege ulterius dat Curiae hic intelligi & informari, quod postea scilicet vicesimo septimo die Aprilis Anno Regni dicti Domini Regis nunc, &c. quarto, apud Westmonasterium praedictum in Comitatu Middlesexiae praedicto, idem Dominus Rex nunc ex eadem Clementia & benigna intentione suis erga subditos suos Regni sui Angliae, per Regiam suam Prærogativam, aliam Regalem suam Declarationem Intitulatam, His Majesty's Gracious Declaration, gerentem datum eisdem die & anno ultimo mentionatis, magno sigillo suo Angliae similiter sigillatam, publicavit; in quâ quidem Declaratione continetur,

54 *The Tryal of the Seven Bishops.*

JAMES REX.

“**O**UR Conduct has been such in all
“ times, as ought to have perswaded
“ the World, that we are firm and constant
“ to our Resolutions; yet that easie People
“ may not be abused by the Malice of crafty
“ wicked Men, We think fit to declare, that
“ Our Intentions are not changed since the
“ 4th of April, 1687, when we issued out
“ Our Declaration for Liberty of Conscience
“ in the following Terms—

His MAJESTY's Gracious

DECLARATION

To all his loving Subjects for

Liberty of Conscience.

JAMES REX.

IT having pleased Almighty God not only
to bring Us to the Imperial Crown of
these Kingdoms, thro' the greatest difficul-
ties, but to preserve Us by a more than or-
dinary

dinary Providence, upon the Throne of our Royal Ancestors; There is nothing now that we so earnestly desire, as to establish Our Government on such a Foundation as may make Our Subjects happy, and unite them to Us by Inclination, as well as Duty; which We think can be done by no means so effectually, as by granting to them the free Exercise of their Religion for the time to come, and add that to the perfect Enjoyment of their Property, which has never been in any Case invaded by Us since Our coming to the Crown; which being the two things Men value most, shall ever be preserved in these Kingdoms, during our Reign Over them, as the truest Methods of their Peace and Our Glory. We cannot but heartily wish, as it will easily be believed, that all the People of Our Dominions were Members of the *Catholick Church*; yet we humbly thank Almighty God, it is, and hath of long time been Our constant Sense and Opinion (which upon divers Occasions we have declared) That Conscience ought not to be constrained, nor People forced in matters of meer Religion. It hath ever been directly contrary to Our Inclinations, as We think it is to the Interest of Government, which it destroys, by spoiling Trade, depopulating Countries, and discouraging Strangers, and finally, that it never obtained the End for which it was employed. And in this we are the more confirmed by

56 *The Tryal of the Seven Bishops.*

the Reflections we have made upon the Conduct of the four last Reigns: For after all the frequent and pressing Endeavours that were used in each of them, to reduce this Kingdom to an exact Conformity in Religion, it is visible the Success has not answered the Design, and that the difficulty is invincible: We therefore out of Our Princely Care and Affection unto all Our loving Subjects, that they may live at ease and quiet, and for the increase of Trade, and Encouragement of Strangers, have thought fit, by Vertue of Our Royal Prerogative, to issue forth this Our Declaration of Indulgence, making no doubt of the Concurrence of Our two Houses of Parliament, when We shall think it convenient for them to meet. In the first place, We do declare, That We will protect and maintain our Archbishops, Bishops, and Clergy, and all other our Subjects of the Church of *England*, in the free Exercise of their Religion as by Law established, and in the quiet and full Enjoyment of all their Possessions, without any molestation or disturbance whatsoever. We do likewise declare, That it is Our Royal Will and Pleasure, that from henceforth the Execution of all and all manner of Penal Laws in Matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Nonconformity to the Religion established, or for or by reason of the Exercise of Religion in any manner

ner whatsoever, be immediately suspended, and the further Execution of the said Penal Laws, and every of them, is hereby suspended. And to the end that by the Liberty hereby granted, the Peace and Security of Our Government in the Practice thereof may not be endangered, We have thought fit, and do hereby straitly charge and command all Our loving Subjects, that as we do freely give them leave to meet and serve God after their own way and manner, be it in private Houses, or Places purposely hired or built for that use, so that they take especial Care that nothing be preached or taught amongst them, which may any ways tend to alienate the Hearts of Our People from Us or Our Government; And that their Meetings and Assemblies be Peaceably, Openly, and Publickly held, and all Persons freely admitted to them; and that they do signifie and make known to some One or more of the next Justices of the Peace, what Place or Places they set apart for those Uses. And that all our Subjects may enjoy such their Religious Assemblies with greater Assurance and Protection, We have thought it requisite, and do hereby Command, that no disturbance of any kind be made or given unto them, under Pain of our Displeasure, and to be further proceeded against with the uttermost Severity. And forasmuch as We are desirous to have the benefit of the Service of all our Loving Subjects, which by the Law
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of Nature is inseparably annexed to, and inherent in Our Royal Person; and that none of our Subjects may for the future be under any discouragement or disability (who are otherwise well inclined and fit to serve Us) by reason of some Oaths or Tests that have been usually administred on such Occasions; We do hereby further Declare, That it is Our Royal Will and Pleasure, That the Oaths commonly called the Oaths of *Supremacy and Allegiance*; and also the several Tests and Declarations mentioned in the Acts of Parliament, made in the 25th and 30th Years of the Reign of Our late Royal Brother King *Charles* the Second, shall not at any time hereafter be required to be taken, declared, or subscribed by any Person or Persons whatsoever, who is or shall be employed in any Office or Place of Trust either Civil or Military, under Us or in Our Government. And We do further declare it to be Our Pleasure and Intention, from time to time hereafter, to grant Our Royal Dispensations under Our Great Seal to all Our Loving Subjects so to be employed, who shall not take the said Oaths, or subscribe or declare the said Tests or Declarations, in the abovementioned Acts and every of them. And to the end that all Our Loving Subjects may receive and enjoy the full benefit and advantage of Our Gracious Indulgence hereby intended, and may be acquitted and discharged from all Pains,

Pains, Penalties, Forfeitures and Disabilities, by them or any of them incurred or forfeited, or which they shall or may at any time hereafter be liable to, for or by reason of their Nonconformity or the Exercise of their Religion, and from all Suits, Troubles, or Disturbances for the same; We do hereby give Our Free and Ample Pardon unto all Nonconformists, Recusants, and other Our Loving Subjects, for all Crimes and things by them Committed or done, contrary to the Penal Laws formerly made relating to religion, and the Profession or Exercise thereof, hereby Declaring, That this Our Royal Pardon and Indemnity shall be as good and effectual to all Intents and Purposes, as if every individual Person had been therein particularly named, or had particular Pardons under Our Great Seal: Which We do likewise Declare shall from time to time be granted unto any Person or Persons desiring the same. Willing and requiring Our Judges, Justices, and other Officers, to take notice of, and obey Our Royal Will and Pleasure herein before Declared. And although the Freedom and Assurance We have hereby given in Relation to Religion and Property, might be sufficient to remove from the Minds of Our Loving Subjects all Fears and Jealousies in relation to either; yet We have thought fit further to Declare, That We will Maintain them in all their Properties and Possessions, as well
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of Church and Abby Lands, as in any other their Lands and Properties whatsoever. *Given at Our Court at Whitehall the 4th Day of April, 1687. In the Third Year of Our Reign.*

Ever since We granted this Indulgence, We have made it Our principal Care to see it preserved without Distinction, as We are encouraged to do daily by Multitudes of Addresses, and many other Assurances We receive from Our Subjects of all Perswasions, as Testimonies of their Satisfaction and Duty, the Effects of which We doubt not but the next Parliament will plainly shew, and that it will not be in vain that We have resolved to use Our uttermost Endeavours to Establish Liberty of Conscience on such just and equal Foundations, as will render it unalterable, and secure to all People the free Exercise of their Religion for ever, by which future Ages may reap the benefit of what is so undoubtedly for the general good of the whole Kingdom. It is such a Security We desire, without the burden and constraint of Oaths and Tests, which have been unhappily made by some Governments, but could never support any; nor should Men be advanced by such means to Offices and Employments, which ought to be the Reward of Services, Fidelity, and Merit. We must conclude, that not only good Christians will joyn in this, but whoever is concerned for the

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increase of the Wealth and Power of the Nation. It would perhaps prejudice some of our Neighbours, who might lose part of those vast Advantages they now enjoy, if Liberty of Conscience were settled in these Kingdoms, which are above all others most capable of Improvements, and of Commanding the Trade of the World. In Pursuance of this great Work we have been forced to make many changes both of Civil and Military Officers throughout Our Dominions, not thinking any ought to be employed in Our Service, who will not contribute towards the establishing the Peace and Greatness of their Country, which we most earnestly desire, as unbiaſſed Men may ſee by the whole Conduct of Our Government, and by the Condition of Our Fleet, and of Our Armies, which with good management ſhall be conſtantly the ſame, and greater, if the Safety or Honour of the Nation require it. We recommend theſe Conſiderations to all Our Subjects, and that they will reflect on their preſent Eaſe and Happineſs, how for above three Years, that it hath pleaſed God to permit Us to Reign over theſe Kingdoms, We have not appeared to be that Prince Our Enemies would have made the World afraid of, Our chief Aim having been not to be the Oppreſſer, but the Father of Our People, of which We can give no better Evidence than by conjuring them to lay aſide all private Animofities as well as groundleſs

62 *The Tryal of the Seven Bishops.*

less Jealousies, and to choose such Members of Parliament, as may do their part to finish what We have begun for the Advantage of the Monarchy over which Almighty God hath placed Us, being resolved to call a Parliament, that shall meet in November next at farthest.

Quam quidem Regalem Declarationem dicti Domini Regis nunc ultimo mentionatum idem Dominus Rex nunc postea scilicet tricesimo die Aprilis Anno Regni sui quarto supra dicto, apud Westmonasterium prædictum in Comitatu Middlesexia prædicto, imprimi & per totam Angliam publicari causavit, & pro magis solempni demonstratione, notificatione, & manifestatione gratiæ suæ Regiæ benignitatis & benevolentia suæ ad omnes ligeos suos in eadem Declaratione ultimo mentionata specificatos postea scilicet quarto die Maii Anno Regni sui quarto, apud Westmonasterium prædictum in Comitatu Middlesexia prædicto idem Dominus Rex debito modo ordinavit prout sequitur.

At the Court at *Whitehall*, the 4th of May 1688. It is this Day Ordered by His Majesty in Council, That His Majesty's late Gracious Declaration, bearing Date the 27th of *April* last, be read at the usual time of Divine Service, upon the 20th and 27th of this Month in all Churches and Chappels within

within the Cities of *London* and *Westminster*, and Ten Miles thereabout; and upon the 3^d and 10th of *June* next in all other Churches and Chappels throughout this Kingdom. And it is hereby further Ordered, That the Right Reverend the Bishops cause the said Declaration to be sent and distributed throughout their severall and respective Diocesses, to be read accordingly.

Et ulterius idem Attornatus dicti Domini Regis nunc Generalis pro eodem Domino Rege dat Curiae hic intelligi & informari, quod post Confectionem praedicti ordinis scilicet, decimo octavo die Maii, Anno Regni dicti Domini Regis nunc quarto supradicto, apud Westmonasterium praedictum in Comitatu Middlesexiae praedicto, Willielmus Archiepiscopus Cantuariensis de Lambeth in Comitatu Surriae, Willielmus Episcopus Asaphensis de St. Asaph in Comitatu Flintiae, Franciscus Episcopus Eliensis de Aarochia Sancti Andreae Holborn in Comitatu Middlesexiae, Johannes Episcopus Cicestrensis de Cicestria in Comitatu Suffexiae, Thomas Episcopus Bathenensis & Wellensis de Civitate Wells in Comitatu Somersetiae, Thomas Episcopus Petriburgensis de parochia sancti Andreae Holborn in Comitatu Middlesexiae, & Jonathan Episcopus Bristolensis de Civitate Bristol, inter se consuluerunt & conspiraverunt, ad diminuendam Regiam Authoritatem, Regalem Praerogativam

rogativam & Potestatem, & Regimen ejusdem Domini Regis nunc *in præmissis, ac ad eundem Ordinem infringendum & eludendum;* ac in prosecutione & executione conspirationis prædictæ, ipsi iidem *Willielmus Archiepiscopus Cantuariensis, Willielmus Episcopus Asaphensis, Franciscus Episcopus Eliensis, Johannes Episcopus Ccestrensis, Thomas Episcopus Bathonensis & Wellensis, Thomas Episcopus Petriburgensis, & Jonathan Episcopus Bristollensis dicto decimo octavo die Maii Anno Regni dicti Domini Regis nunc quarto supradicto, vi & armis, &c. apud Westmonasterium prædictum in Comitatu Middlesexie prædicto, illicitè, malitiosè, seditiosè & scandalosè quoddam falsum, fictum, perniciosum, & seditiosum libellum, in scriptis de eodem Domino Rege & Regali Declaratione & Ordine prædictis (prætensu Petitionis) fabricaverunt, composuerunt & scripserunt, & fabricari componi & scribi causaverunt, & eundem falsum, fictum, malitiosum, perniciosum, & seditiosum libellum per ipsos prædictum Willielmum Archiepiscopum Cantuariensem, Willielmum Episcopum Asaphensem, Franciscum Episcopum Eliensem, Johannem Episcopum Ccestrensem, Thomam Episcopum Bathonensem & Wellensem, Thomam Episcopum Petriburgensem, & Jonathanum Episcopum Bristollensem manibus suis propriis respectivè subscriptum die, & anno, & locoutimo mentionatis in præsentia dicti Domini Regis*

Regis nunc vi & armis, &c. publicaverunt,
& publicari caufaverunt; *in quo quidem falso,
ficto, malitioso, pernicioso & seditioso libello
continetur*——

The humble Petition of *William*
Archbishop of *Canterbury*,
and of divers of the Suffra-
gan Bishops of that Province
(now present with him)
in behalf of themselves and
others of their absent Bre-
thren, and of the Clergy
of their respective Diocesses,

Humbly sheweth,

THAT the great Averseness they find
in themselves to the distributing and
publishing in all their Churches, Your Ma-
jesty's late Declaration for Liberty of Con-
science, proceedeth neither from any want
of Duty and Obedience to Your Majesty ;
our Holy Mother the Church of *England*
being both in her Principles and in her con-
stant Practice unquestionably Loyal, and hav-
ing to her great Honour, been more than

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once publickly acknowledged to be so by Your Gracious Majesty; nor yet from any want of due Tenderneſs to Diſſenters, in relation to whom they are willing to come to ſuch a Temper as ſhall be thought fit, when that matter ſhall be conſidered and ſettled in Parliament and Convocation. But, among many other Conſiderations, from this eſpecially, becauſe that Declaration is founded upon ſuch a diſpenſing Power, as hath been often declared illegal in Parliament, and particularly in the Years 1662, and 1672, and the beginning of your Maſteſty's Reign; and is a matter of ſo great Moment and Conſequence to the whole Nation, both in Church and State, that your Petitioners cannot in Prudence, Honour, or Conſcience, ſo far make themſelves Parties to it, as the Diſtribution of it all over the Nation, and the ſolemn Publication of it once and again, even in God's Houſe, and in the time of his Divine Service, muſt amount to, in common and reaſonable Conſtruction.

— In contemptum *dicti Domini Regis nunc*, & Legum hujus regni Angliæ, *manifestum, in malum exemplum omnium aliorum in tali casu delinquentium, ac contra pacem dicti Domini Regis nunc, Coronam & Dignitatem suas, &c. Unde idem Atornatus dicti Domini Regis nunc generalis pro eodem Domino Rege petit advisamentum Curiae hic in præmissis, & debitum legis proceſſum verſus*

fus

sus præfatos Willielmum Archiepiscopum Cantuariensem, Willielmum Episcopum Asaphensem, Franciscum Episcopum Eliensem, Johannem Episcopum Cicestreensem, Thomam Episcopum Bathonensem & Wellensem, Thomam Episcopum Petriburgensem, & Jonathanum Episcopum Bristollensem fieri; ad respondendum dicto Domino Regi de & in præmissis, &c.

T. Powys.

W. Williams.

Mr. Att. Gen. My Lord, we humbly pray, that according to the Rules of the Court in such Cases, my Lord Archbishop of *Canterbury* and my Lords the Bishops may plead to the Information.

Mr. Soll. Gen. My Lords the Bishops are here in Custody in Court, upon the highest Commitment that can be in this Kingdom, to wit, That of the King in Council; and we pray that, according to the Course of the Court, they may plead to the Information presently.

L. C. J. What does his Grace and my Lords the Bishops say to it?

Mr. Serj. Pemberion. Will your Lordship give us leave, who are of Council for his Grace my Lord of *Canterbury* and the rest of my Lords the Bishops, to speak a Word in this Matter?

L. C. J. Ay, Brother, go on.

Mr. Serj. Pemberton. That which we have to desire of your Lordship and the Court is this; We have now heard this Information read, and 'tis plain we could know nothing of this before, the Warrant of Commitment being only in ge-

neral for a Libel; and this being a Case of the greatest Consequence, peradventure, that ever was in *Westminster Hall*, (that, I think, I may boldly say, it is a Case of the greatest Consequence that ever was in this Court) and it being a Matter of this Nature, that these great and Noble Persons, my Lords the Bishops, are here taxed with, that is, for making a seditious Libel contained in such a Petition (as though it was a Libel to petition the King) we do beg this of your Lordship, that (it being of this great Importance) to the end we may come prepared to say what we have against it, we may have an Imparlance till the next Term.

Mr. Finch. Pray, my Lord, favour me with a Word on the same Side for my Lords the Bishops. Your Lordship sees now how necessary the Trouble we gave you before, in making our Objections against the reading of the Information, was, and what the Drift and Aim of the King's Council was, in the desiring the Information to be read first; for now it is read, what is it that they desire of your Lordship? They desire that my Lord Archbishop, and my Lords the Bishops, being in Custody, and brought here in Custody, they may be now so charged with this Information as to plead presently: This, my Lord, we oppose, and with humble Submission we ought to have time to imparl, and a Copy of the Information, that we may consider what we have to plead to it; for however we come here into Court, whether legally or not legally, yet ought we in the one and in the other Case to have time to consider of our Defence. And, my Lord, till of later time, this Practice, which the King's Council now calls the Course of the Court, was never

The Tryal of the Seven Bishops. 69

never used, nor was any Man required to plead immediately; and, my Lord, if the Practice of the Court has not been anciently so (as I do believe they will scarce shew it to be ancients than a few Years last past) then, with humble Submission, though the Course of the Court have been so for some little time past, yet it is not in the Power of the Court (as we humbly conceive) to make a Course in Prejudice of all the Privileges that the King's Subjects are by the ancient Rules of Law intitled to; they cannot make a new Law in Prejudice of any Right or Privilege which the Subject hath, and call it the Course of the Court. Now that this which we desire for my Lords the Bishops is the Right and Privilege of the Subject, is most manifest; for there might be many Defences that a Man may have to make to an Accusation of this Nature, which it is impossible for him to know at the first hearing of an Information read, and yet which would be necessary for him to make use of, or at least it would be impossible for him to make use of in such a Manner as the Law doth allow of and require. It may be the Pleas which he has to plead may be such as that he has not time to put into Form; there may be Matters upon the hearing the Information read, that it would be necessary for him to give Answer to which he knew not of before, and therefore may neither have Materials ready, nor be capable of putting them (if he had them ready) into such Form as the Law requires. They tell you on the other Side, that if a Man be brought into Court by legal Process, he may be charged with any Information whatsoever; that they are not tied to the Fact alledged in the Commitment, but find-

70 *The Tryal of the Seven Bishops.*

ing the Party under a legal Imprisonment, they can exhibit an Information against him for any other Offence. Then, my Lord, would I fain know, which way any Man alive can be prepared to make his just and legal Defence, for he knows not his Accusation; for tho' he think it may be for that for which he was committed, yet it may prove otherwise, and then he can be no way provided with Materials for his Defence, but he must lose all Advantages which the Law gives him for his Defence. My Lord, if this be the Course of latter times, yet you will not take that to be such a Law as is binding to all future times; and we are sure the King's Council cannot shew that this was the ancient Practice, for that was quite otherwise.

L. C. J. Mr. *Finch*, you were not here, I suppose, when this Question came in Debate in this Court lately, in the Case of a very great Person; 'twas urged very earnestly and very learnedly by one that stands by you; we upon that Debate asked Sir *Samuel Astry* what the Course of the Court was, and he told us that the Course of the Court (of his own Knowledge for all the time that he had sat as Clerk of the Crown in this Court) was, that when any one was brought in Custody, or upon a Recognizance, they were to plead presently.

Mr. Finch. Sir *Samuel Astry* has not been here so very long, as to make the Practice of his time the Course of the Court.

L. C. J. But I will tell you what he said further, if you will hear me; he said he had enquired of Mr. *Waterhouse*, whom we all know to have been an old Clerk in the Crown Office, and he

The Tryal of the Seven Bishops. 71

he told him that that had been the Practice all his time.

Mr. Serj. Pemberton. My Lord, I hope the Course of the Courts of *Westminster-Hall* shall not depend upon the Certificate of such a one as *Mr. Waterhouse*, who is a Man (we all know) is superannuated, and very defective in his Memory.

Mr. Just. Powell. Certainly what they desire for the Defendant is very reasonable, for I take the Point to be only this, Whether a Man may be compelled, being in Custody, to plead to an Information presently.

Mr. Just. Albybone. Pray, Brother *Powell*, spare me a Word in this Matter; *Mr. Finch*, I suppose you labour that the Court will not deny you, that you may have time to plead according to the Course of the Court: We are not making new Courses for particular Facts, that by my Consent we will never do; but if you say such a thing is not the Course of the Court, and the King's Council affirm it is, how shall this be determined? and from whom can we take our Information to determine what is the Course? I am sure there is none of us that are here now, can pretend to tell what the ancient Course was; for my part, I declare it, I cannot; and I know no reason there should be any Novelty introduced into the Court upon any Ground or Reason whatsoever, nor will I consent to any while I sit here. Therefore I desire to know what is the ancient Course, and how shall we come to the Knowledge of that Course, if not by the Certificate of those who have been ancient Officers of the Court?

72 *The Tryal of the Seven Bishops.*

Lord Ch. Just. Nay, that is certain, the Court will bring in nothing new in any such Case as this.

Mr. Just. Allybone. If that hath not been the ancient Course without Exception, I am against it; I know no Reason my Lords the Bishops should have any thing new put upon them; on the other Side, they must not expect to have the ancient Course of the Court declined in their Case.

Mr. Pollexfen. Pray, my Lord, hear me a little in this Matter; 'Tis not my Desire that any Law should be altered for any particular Case, and the Course of the Court I know is the Law of the Court; but I humbly crave leave to say, That I take the ancient Course of the Court to be quite otherwise, than what the King's Council would have it; there may be particular things done now and then, perhaps in particular Cases, and upon particular Occasions, which will not make what is so done to be the Course of the Court, nor be a binding Rule to you. Now as to this Matter, of time or no time, to plead to an Information, I remember the time very well, when I and some others that stood at the Bar, and wondered when we saw this Practice coming in, and thought it a very hard and mischievous thing, for (in truth) the several Plots that have been, and the Heats of Men about those things, have brought in this Course; for certain I am, and I dare affirm there never was any such Course here before, neither upon Warrant from the Chief Justice, nor upon Recognizance, or any other Process, was a Man compelled to plead instantly, without having a *Capias* in the regular Form after a Contempt for not appearing upon Summons:

Truly,

Truly, my Lord, we had no Interest in the Matter one way or other, to make us scruple it any otherwise than as we were concerned, that the Law and Justice of the Nation should have its true and ancient Current. And this I can assure your Lordships, that here was both my Lord Chief Justice *Saunders*, and Mr. Serjeant *Holt*, and my self, who took notice when this was first offered at, to make a Man plead immediately without giving him time to consider what he should plead, could not but say among our selves that it was an unreasonable thing; and we were inclined to speak to the Court to inform them of the Consequence of it, which needs must be very mischievous. Sir *Samuel Astry*, we know, came to be Clerk of the Crown in my Lord *Scroggs*'s time. We know 'tis usual and customary for the Court to ask what is the Course of the Court in doubtful Cases, and to receive the Information from the Officers of the Court on both Sides; If it be on the Plea Side, from Mr. *Aston*, if on the Crown Side, from Sir *Samuel Astry*, concerning things of Practice, but I did never think that what they reported was final and conclusive to the Court. But to make this Matter clear, I humbly pray that you would please to give order for the search of old Precedents, how the old Practice really hath been; every thing that has been done in hot times, is not to be made a standing Rule: If there do any such thing appear to have been done and practised anciently, truly, my Lord, I will submit, and say I am under a mighty Mistake; but if this which is now urged for the Course of the Court, is nothing but what the Zeal of the Times and Heat of Persecutions hath introduced, surely that is not
fit

fit to be a constant Rule for the Court to go by; for every one knows, that the Zeal of one time may bring in that by Surprize upon one Man, which when things are cool, or at another time, will appear to be plain Injustice. We have indeed seen strange things of this kind done before, but I hope to God they are now at an end, and we shall never see any such thing done hereafter. And as for this particular Point, I think it is a wonderful thing in the Consequence of it, if the Law should be as they would have it. Here is a long Information just read over to a Man (but whether long or short, as to the main Point, 'tis the same) and you say the Course of the Court is, he must plead to it immediately. Surely Matters of Crime that require Punishment to be inflicted on Men, are of as much Consequence and Concern as any Civil Matter whatsoever; and Men are to have their Rights in those Matters preserved, as well as in other Matters, which is all I press. For suppose a Man has a special Matter to plead, as particularly suppose it be the King's Pardon, I cannot give this in Evidence upon a Tryal after Not Guilty pleaded, then I ought to plead it; but what if I have it not ready, 'tis not telling the Court of it, without shewing of it, that will do; and it may be a Man that is taken up, and brought hither in Custody, cannot have it ready to shew; but yet then by this Rule a Man shall lose the Benefit of his Plea, by being compelled to answer immediately. But they say the Court will do right; I suppose they will; and my Lords the Bishops in this Case I believe do not distrust but that the Court will do right; but I never thought the Law was brought to that pass, that such things as these were

were left wholly in the Discretion of the Court; certainly Imparances, Time to plead, and just Preparations for a Man's Defence, are things that the Law has settled, and not left in the Discretion of the Court; and truly to me it seems all one utterly to take away a Man's Defence, as to hinder him of the Means to prepare for it. My Lord, here is an Information before you against these noble Lords; it is a Matter of great Moment; and tho', I hope in God, there is no great Cause for it, yet however since such Persons are concerned, and 'tis a Matter of such great Weight, I hope you will give us such an Imparance, as if we had this Day appeared upon the ordinary Process, which is an Imparance until the next Term.

L. Ch. Just. There is a Difference between this and that other Case: If my Lords the Bishops had appeared upon the Summons, they would have had an Imparance of course; but when they are brought up hither in Custody, that mightily alters the Case. But that we may not be too hasty in a thing of this Nature, let the Clerk of the Court be consulted with, that we may know what the true Course is.

Mr. Attorney General. My Lord, we pray Sir Samuel Astry may be examined a little about it.

Mr. Just. Allybone. Mr. Pollexfen, I believe the Court is unanimous in their Resolutions of making nothing new in this Case; but pray give me leave to tell you, this is not the first time that this Question has come to be agitated in this Court since I came hither. Now from whence can the Court take their Measures to be rightly informed what the Practice of the Court is, but from

76 *The Tryal of the Seven Bishops.*

from the Information of the Officers of the Court, who by their constant Employment are most capable of knowing what the Course is? Now if you come to offer any thing that may be Matter of Doubt to the Court, concerning the Practice of the Court, you having known that this thing was controverted before (for so it has been) should have provided your self with something that must be a reasonable Motive for us to doubt; for this has not been only once, but often moved; and our Officers have been consulted with concerning this Question, which took its Rise from such Objections as you have made now. Now for you to tell us, That you desire that we would look into Precedents, is, methinks, pretty odd; if you had brought us any Precedents, it had been something. And withal I must tell you, that you must not reckon the Favour of the Court in any particular Case, to be the standing Rules for the Practice and Course of the Court; but instead of bringing Precedents, you only offer your own Thoughts, and those would create no doubt in us, but what has been before satisfied upon Examination of the Officers of the Court.

Mr. Pollexfen. Pray Sir, will you give me leave to answer you one Word?

Mr. Just. Powell. Truly I have not observed that ever this Point was started so as to beget a Question since I came hither, but only in the Cases of the *Quo Warranto's*; and truly in that Case I thought it hard they should be denied time to plead, especially the Consequence being so fatal.

L. Ch. Just. Yes, yes, Brother, it has been several times.

Mr.

Mr. Just. Powell. Truly, my Lord, I have not observed it, nor do I remember it.

Sir Rob. Sawyer. My Lord, I have always taken the Distinction, as to these Matters, to be this —

Mr. Just. Powell. But, my Lord, if the ancient Course of the Court hath been to grant an Impar lance, and a Copy of the Information before they plead, I see no Reason why my Lords the Bishops should not have the Benefit of that ancient Course; for if a Man that is sued at Law for a Two-penny Trespass, shall have that Advantage as to receive a Declaration, and have time to plead what he can to it, why should not my Lords the Bishops, in a Matter of so great Weight, have the same Advantage too? But indeed, if the Course of the Court hath been anciently otherwise, I can say nothing to it; for the Course of the Court is certainly the Law of the Court.

Mr. Just. Allybone. Brother *Powell*, you say well, if they did produce any one Precedent to give us occasion to doubt in the Matter.

Sir Rob. Sawyer. Pray, good my Lord, will you give me Leave —

Mr. Att. Gen. Why, Sir *Robert Sawyer*, will you never have done?

Mr. Soll. Gen. No, they are all so zealous and eager in this Case, that they won't permit either the Court, or any Body else, to speak a Word but themselves.

Mr. Serj. Pemberton. Good Mr. *Sollicitor*, give us Leave to answer the Objection that the Court hath made to us; we would satisfy your Lordship where the Distinction really lieth; where there has been an Opportunity for the Party to come

come in, as by Summons, or Subpcena, or the like, and he has slipped that Opportunity, and so the King is delayed; in that Case they always used to put the Party upon pleading presently, when he was taken up upon a *Capias*, and brought in Custody; but when there was never any *Subpcena* taken out (as the Case is here) so that the Party never had an Opportunity to come in and render himself, and appear to answer it according to the due Course of Law, an Impar lance was never yet denied, nor time to plead; and that is the Case here.

Sir Rob. Sawyer. My Lord, Mr. *Serjeant* has given you the true Distinction, where Process has gone out to summon any one to appear to an Information, and he hath failed to appear according to the Summons, and the Prosecutor for the King takes out a *Capias*, if he be brought in upon that *Capias*, the ancient Course has been so as they say: But for that other Matter, where a Man comes in upon a Commitment at the first Instance, and an Information is put in just as this is, the same Morning and not before; if they can shew any one Precedent of this kind fifteen Years ago, I would be contented to yield that they are in the right; but I am sure they are not able to do it: In Sir *Matthew Hales's* time when this was moved, it was refused; and he was clear of another Opinion.

Mr. Att. Gen. I hope now, my Lord, we shall be heard a little for the King, and I cannot forbear observing in the first Place somewhat that these Gentlemen have offered at, who are now inveighing against the Heat of the Times, when a great part of that Heat we know who were the Inflamers of; but what is all this to the Purpose?

pose? The Question is barely this, Whether, when a Man is brought in Custody into this Court, and charged with an Information, he shall not, by the Course of the Court, be compelled to plead presently.

Sir Rob. Sawyer. To Indictments for Treason and Felony, he shall be compelled to plead presently, but not to an Information for Misdemeanours.

Mr. Just. Powell. It seems to me very hard he should.

Mr. Att. Gen. Sir, there are many things that seem hard in Law, but yet, when all is done, the Judges cannot alter the Law. 'Tis a hard Case that a Man that is tryed for his Life for Treason or Felony cannot have a Copy of his Indictment, cannot have Council, cannot have his Witnesses sworn, but this has been long practised, and the Usage is grown to a Law, and from time to time it hath been so taken for Law, it cannot be altered without a new Law made; as it hath been heretofore, so it must be now, till a greater Authority alter it. And so, as to the Case here at present, if it were a new Case, and it was the first Instance, I must confess I think I should not press it; but if this be the constant Practice of the Court, and if these Gentlemen that now oppose it, some of them Ministerially, some of them Judicially, have themselves established this Practice, they have no Reason to wonder that we follow them in it. We do not blame them for what they do now, for Men when they are of Council may be permitted to argue for their Client contrary to their former Opinions; but if these things by their Procurement have done thus before, surely without Offence we may pray the like may be done now. 'Tis our Duty on Behalf

half of the King to desire that he may have Right done him, as well as they on the Behalf of my Lords the Bishops; and for the Usage to cite Precedents were endless, especially of late times; and these Gentlemen know them all very well, for they were some of them Parties to them themselves, and we can do no more, nor need, than to put them in mind of their own doings; whether it was so before their time or not, it concerns them to make out, and retract their own Errors; but in our Observation, if ever this was pressed or insisted upon on the King's Behalf, this Course has always been pursued.

Sir Rob. Sawyer. For a Precedent, my Lord, there is the Case of my Lord *Hollis*, where there was given time after time.

Mr. Soll. Gen. That was only time to argue the Plea to the Jurisdiction of the Court.

Mr. Just. Powell. Mr. *Sollicitor*, have you ever known it contested, and upon Debate so ruled, in an Information for a Misdemeanour, as this Case is?

Mr. Soll. Gen. If you please to ask Sir *Samuel Astry*, he will inform you how the Course has been.

L. C. J. What say you, Sir *Samuel Astry*?

Sir Sam. Astry. My Lord, when I came into this Place, there was an ancient Gentleman that had been long a Clerk in the Office.

L. C. J. How many Years is it since you came into this Office?

Sir Sam. Astry. About a dozen Years, I think, my Lord; and he sat in this Place where Mr. *Harcourt* does now; he was always accounted a loyal, honest, and intelligent Man, that is Mr. *Waterhouse*, who is now alive: and when I came
into

into my Office, I took my Instructions in a great Measure from him, and asked him what the Course of the Court was, in such Cases which I my self did not understand; for tho' I had been an Attorney twenty Years, yet it was on the other Side, the Civil Side; and tho' I knew some things of my own Knowledge, yet I did not so well know the whole Practice of the Court; and particularly I asked him what was the Course of the Court in this Case that is now in question, and he told me, that in all his Time and Experience, if a Man appears upon a Recognizance, or was a Person in Custody, or appeared in *propria persona*, as a Person privileged, he ought to plead at the first Instance; and according to that Practice, when Sir Robert Sawyer was Attorney-General, it was the constant Practice, and I am sure he knows it is no new thing.

Sir Rob. Sawyer. But upon what Informations, Sir Samuel Astry, were they Informations upon Misdemeanours?

Sir Sam. Astry. Yes, several.

Sir Rob. Sawyer. But was there not Process taken out first to call the Party in?

Sir Sam. Astry. Yes, where Process was never taken out.

Mr. Att. Gen. For how long time is this that you speak of your own Knowledge, Sir Samuel?

Sir Sam. Astry. About a dozen Years.

Mr. Serj. Pemberton. It was never done till very lately, but after the Party was in Contempt for not appearing.

Mr. Soll. Gen. I would ask you, Sir Samuel Astry, one Question: Was the usual Process of *Subpœna* first taken out? for Mr. Serjeant Pemberton lays it was; do you find any Warrant for such a Difference as that?

82 *The Tryal of the Seven Bishops.*

Mr. Serj. Pemberton. Do yo find any such Case as this is?

Mr. Soll. Gen. Nay, pray *Mr. Serjeant* give us your Favour, and let us ask our Questions according to your own Doctrine. How do you find the Practice to have been as to that Distinction they have made?

Sir Sam. Asty. Sir, I would be very loath to enlarge the Precedents of the Crown-Office further than the Truth is; I tell you whence I took my Instructions, from *Mr. Waterhouse*, who was an ancient Clerk in the Office, he has been in that Office sixty Years; and the Instructions I took from him were, that this was the Practice all his time, and it has been asserted all my time; it has been often contested, I confess, and *Mr. Pollexfen* has always opposed it, and moved against it, but it has been always ruled against him: I know it was against his Judgment, but the Court always over-ruled it.

Sir Rob. Sawyer. *Sir Samuel Asty*, can you give any one Precedent before you came into this Office?

Sir Sam. Asty. Sir, I can go no farther than this that I have told you, what Information I received from him.

Sir Rob. Sawyer. What is all this but a Certificate from *Mr. Waterhouse*?

L. C. J. We can be informed no otherways than by Certificate from the old Clerks of the Office.

Mr. Serj. Pemberton. Alas, he is a Child, and not fit to do any thing.

Mr. Pollexfen. We all know *Mr. Waterhouse* very well, he is a very weak Man, and always was so, and there is no depending upon any thing that he says.

Mr.

The Tryal of the Seven Bishops. 83

Mr. Soll. Gen. Pray, my Lord, will you hear us a little for the King?

The Bishop of Peterborough whispering with Sir Robert Sawyer, Mr. Solicitor said to him, My Lord, you had better look another way, and look towards the Court, for there your Business lies.

L. C. J. Well, *Mr. Solicitor*, what say you?

Mr. Soll. Gen. My Lord, it appears plainly that the King is in possession of this Privilege, and has been so for these dozen Years, for so long the Justice of the Kingdom towards all the Subjects, hath run, in all the Instances of it, in this Channel; and tho' it has been contested as often as *Mr Pollexfen* has been of Council for the Defendant, in such Cases it has always been ruled against him; he indeed has made his continual Claims (*Sir Samuel Astry* says) he has raised the Dutt, and made a Hue and Cry, but it has always gone against him. And I would ask the rest of you Gentlemen that are of Council for my Lords the Bishops (for some, or one of you, I am sure, has been concerned in every Information that has been exhibited in this Court for this nine or ten Years last past, I would ask you) whether in any Information that you have been concerned in, if the Party, being brought in by Process, insisted to have Time and an Imparlance, it was ever granted him? I know you will not say it ever was; why then should there be more done in this Case, than has been done in all other Cases this ten Years? 'Tis not sufficient to make Declarations against the Unreasonableness of the Practice, for it is but what you have done your selves, and insisted upon for Law; and all those Men that upon Informations have been compelled to plead, have had Injury done

G 2

them,

84 *The Tryal of the Seven Bishops.*

them, or else these Lords will have no Injury by the Court's taking the same Course. It is true, my Lords the Bishops are Peers, and here are seven of them, and seven Lords go a great way, they make a Committee, I think, in the House of Peers; and a mighty Matter is made of it, that this is the Case of so many Lords: But will you alter the Course of the Court, because seven of my Lords the Bishops are concerned in it, and they make a mighty Stir about the Reasonableness of the thing? How can it be believed that the Law will not give a Man time to make his Defence? They agree themselves, that if it were in the Case of Life and Death, they must plead presently; and doth not the same Reason hold? and may not an Argument be drawn *à fortiori*, in the Case of a Misdemeanour? If I am not to have time when I plead for my Life, there is less Reason I should have time to answer a Trespass: But, my Lord, 'tis not Reason that weighs in the Case, 'tis the Course of the Court, which is the Law of the Court, that we are contending for; and what is there in the Case that should require so much time for my Lords the Bishops to plead to it? It is charged in the Information, that these noble Prelates did make a Libel, which was produced by them, and published in the King's Presence; they can easily tell whether they have done this, or not done it; what can they plead but the general Issue? They talk of special Matter to be pleaded, but can they shew any more that they can say, than what any poor ordinary Countryman if he were here to plead to an Information, could say; that is, whether he was Guilty or Not Guilty? These Lords can tell whether it be true that they did publish the Paper laid in the Information, and then your Lordship will tell them
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what will be the Consequences of that Publication in Point of Law. We say all this was done at *Westminster*, there the Scene is laid; and it is not an Information for an old stale thing done a great while ago, but a thing that was done Yesterday, and a thing notorious enough, their contesting with the King about his Declaration of Indulgence. And as to what Mr. *Finch* has said, That this is a Novel Invention, and a Trick to rob a Man of his just Defence; sure he forgets who it is that taught us the Trick; if it be a Trick, we have learn'd it from those that trick'd before us. And what is it that these Lords do desire? they would have an Imparlane till *Michaelmas* Term: does or can your Lordship think they ask that which is reasonable? to have six Months time to plead Not Guilty to an Information for a Libel; and when so many Men have been denied it formerly upon the Instigation of those very Gentlemen, that now press so very hard to have it granted, sure they must expect to be denied it too; and all this while these Lords lye under this Accusation, which is not so trivial a Matter as some would make it. I believe my Lords the Bishops have a Desire to be cleared, I suppose it is only their Council that desire to delay it, upon what Ground I know not. I believe they themselves would be glad to remove the Imputation, which would be best done by a Tryal, and the sooner the better: If they have a Mind to justify themselves, this is the readiest Course for it, and they may do it presently by pleading Not Guilty. My Lord, I know I am in a great Auditory, and abundance of your Lordship's time has been taken up already; I press it therefore for the sake of the King, and for the sake of my Lords the Bishops, we shall else have

G 3

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all hang in Suspence, and hang in the Air for six Months longer; therefore let the Matter be put upon a fair Issue, so as it may come to a speedy Determination. I am sure if these Lords be innocent to Day, they will be innocent to Morrow; and if it were my own Case, I would desire to have it tryed as speedily as I could, and therefore I pray they may plead immediately.

Mr. J. Powell. Mr. *Sollicitor*, what do you say to the Difference that was taken between a Person that was brought in Custody at the first Instance, where there is no Contempt to the Process of the Court, and one that comes in hereby *Capias*, upon Default of appearing at the Summons?

Mr. Finch. My Lord, if I apprehend them aright, they give us more than we did ask; for Mr. *Sollicitor* has laid it down as a Rule, that if a Man is taken upon a *Capias* in a mean Process, he shall have no Impar lance.

Mr. Soll. Gen. No, you are greatly mistaken, Sir, and I pray don't lay down Rules for me.

Mr. Finch. If I am, Sir, I beg your Pardon; but this I am sure of, if a *Venire Fac.* goes out, which is in the Nature of a *Subpoena*, and the Party appear to it, that being the first time he could come into Court, you cannot force him to plead to an Information, but he has an Impar lance of Course.

Mr. J. Powell. Methinks it seems very reasonable, that this forcing a Man to plead presently should be only a Punishment for a Contempt of the Court; and pray, were my Lords the Bishops in Contempt to the Court when they came here to Day? Certainly they were not, for no Man is in Contempt, but he that being served with Process, disobeyes that Process; and if my Lords the

Bishops

Bishops had been served with a *Subpœna*, and had not appeared, then there would have gone out a *Capias* to bring them in, and so they would have come in upon a Contempt, and then they would have come within the Rule.

Mr. Soll. Gen. If you have a mind to it, you may ask Sir *Samuel Astry* again.

Mr. Att. Gen. If they come in upon Bail they ought to plead presently.

Mr. J. Allynbone. Mr *Finch*, I'll tell you what sticks with me; truly you could not but be aware that this would be required of you, for this very thing was in debate last Term, and you know what Rules the Officer said was the Course of the Court; why did you not therefore come prepared with some Precedents, to shew us what the Course of the Court is?

Mr. Att. Gen. Truly, my Lord, at this rate we shall keep your Lordship here all this Afternoon, if these Gentlemen will not be satisfied with the Rule of the Court; and for an Answer to what Mr. Justice *Powell* says, if any Riot be committed in the Country, and the Parties are bound by Recognizance to appear here, that is no Process of this Court, and so consequently there can be no Contempt, and yet they must plead presently.

Mr. J. Powell. There is a particular Reason for that, because they are bound by Recognizance; Sir *Samuel Astry* and others say, that if they come in by Recognizance they must plead presently.

Mr. Soll. Gen. But for the thing it self, (that the People that hear us may not imagine that this Court puts a Hardship upon my Lords the Bishops, more than is done in other Cases) it is best to keep the same Rule as is in all other Cases; for when all is done, when Justice goes with an

88 *The Tryal of the Seven Bishops.*

equal Current, without any regard to one Person or other, then every Body is safe, and all Persons concerned do their Duty: So in this Case, here be no Precedents produced, wherein it has been otherwise; then can no Person complain but that things go in this Case as they do in all other Cases. Perhaps such a Case (as to the Fact of it) never happened before, but for the Law of it, that is plain, and the same as in all other Cases; for that there may be an Information against my Lords the Bishops, as well as other People, if they make Libels, sure it is no doubt at all; and if an Information lies against them for it, they are under the same Rules as others are. But these Gentlemen talk of being surprized, and that this is the first time they have heard of this Information; but have we told any News in this Information? Was not all that is contained in it, notoriously enough known before? Was not the King's first Declaration very well known? Was not his second Declaration very well known? Was not his Order of Council for the reading of the Declaration very well known? Is not your own Petition a thing very well known to yourselves and all the world? Then these being the particular Facts of which this Information is made up, and we only say you did do this Fact, and we ask you, did you do it, or did you not; can there be any great Surprise in this? My Lord, I cannot see any thing that alters this from the common Case, but only their being Peers; and since this Question has been heretofore under Contest, these Gentlemen have had time enough to have prepared Precedents, to differ this from the common Rule, if they could; but since they cannot, we desire they may have the same Rule that is in all other Cases, and then to be sure all will go right.

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The Tryal of the Seven Bishops. 89

L. C. J. Sir *Samuel Astry*, pray will you tell us, whether ever the Court used to grant an *Imparlan*ce where a Person comes in in Custody? or did you ever know, when a Person comes in upon a Commitment, time was given him to plead?

Mr. Serj. *Pemberton*. Have you ever known it dis,uted and denied?

Sir Sam. *Astry*. My Lord, I have known that 'tis in the Discretion of the Court to grant what time they please.

L. C. J. Is it the Course of the Court to give an *Imparlan*ce?

Sir Sam. *Astry*. No, 'tis the Favour of the Court; and if the Defendants have at any time shewed a reasonable Cause that they have special Matter to plead, or any other Cause allowed by the Court, the Court has sometimes indulged them so far as to give them time.

L. C. J. But how is the ordinary Course, Sir *Samuel Astry*?

Mr. J. *Allybone*. Ay, for as I said before, things done in particular Cases in Favour, are not Precedents.

Sir S. *Astry*. I have told your Lordship the Course is this, that any Person that appears upon a Recognizance, or is taken up by your Lordship's Warrant, or by a Warrant from a Justice of Peace, or any other way in Custody, or any Officer of the Court that is a privileged Person, and that must appear in *propria personâ*, must plead presently, if the Court upon particular Reasons do not give him time; and this I received Information of, as the Practice of the Court, from Mr. *Waterhouse*, who had been a Clerk in the Office sixty Years.

Mr.

90 *The Tryal of the Seven Bishops.*

Mr. Soll. Gen. He said so before, but these Gentlemen will never be contented, unless they have a new Law made for them.

Mr. Pollexfen. My Lord, I would not unnecessarily trouble your Lordship, but truly this is a Case of great Concern. And first of all, I think we shall all agree, that what has been used for ten or twelve Years past will not make the Course of the Court; and next I perceive they do not bring any one Instance for any Proceeding of this sort above ten or twelve Years old: But then (say they) on the other Side, Why do not you bring Precedents that it has gone otherwise heretofore? My Lord, that cannot be done, for it is a Negative on our Side, that this which they desire is not the Course of the Court; but then (as it is impossible) to prove a Negative, so the Proofs should come on the other Side that this has been done; they ought to shew it, if there has been any such thing as a standing Rule, or else it shall be presumed an Innovation, as being contrary to all Reason. But, my Lord, because they put it upon us, there is this Proof on our Side, as much as a Negative can afford: In those Proceedings, that were in the great Case of the *Habeas Corpus*, there was an Information against *Elliot* and others, they had time given them to plead over and over; so that there is one Precedent: and as many of these Cases in former times as can be found, will shew that this was always the Course. But pray (say they) produce us one Instance, that ever there was a Man that came in upon a Recognizance that had time to plead. Truly, my Lord, I cannot just now tell whether any such Instance can be produced, but I verily believe there may be a great many: But I turn it upon them, and that with great Reason, with Sub-

Submission to your Lordship; Shew me any Man (if you can) above a dozen Years ago, that had not time allowed him to plead. Ay but (say they) Mr. *Waterhouse*, an ancient Clerk of the Crown-Office, that has been there these sixty Years, hath certified that this hath been the Practice of all his time. My Lord, we that have been conversant in the Business of this Court, did all very well know Mr. *Waterhouse* when he was here, and sat in Court in the Place of Sir *Samuel Astry*.

Sir Sam. Astry. No, Sir, it was in Mr. *Harcourt's* Place.

Mr. Pollexfen. Well, he executed a Place here, and 'tis no Matter whether he was Master of the Office or no; but I think we all knew him very well. He was a Man as lame in his Business as could be, for there are some Men that will never do Business well, let them be never so long at it; and he was as weak in the Practice of the Court, and every thing else, as 'tis possible for one that has been bred in an Office can be; and at this time he is grown so decrepid and superannuated, that you may as well depend upon the Certificate of an old Woman, as any thing that he shall say in such a Matter as this. He is now almost fourscore Years of Age, and has lost that little Memory and Understanding he had; but if his Certificate must be depended upon, because of his standing in the Office, pray, my Lord, let him come hither, and do you ask him what he has to say in this Matter.

Mr. Soll. Gen. Aye, that is very well indeed.

Mr. Pollexfen. Good Mr. *Solicitor* spare us, certainly there needs not such great haste in this Matter, we are upon a business of very great Weight and Concernment, for you are now making

92 *The Tryal of the Seven Bishops.*

king a Law for the whole Kingdom in point of Practice, in Cases of this Nature. We do say, indeed, that by the Reason of the Heat and Zeal of these last ten Years, such a Usage has been introduced, but Sir *Samuel Astrey* tells you, it was opposed, and I hope that neither I, nor the thing will be the worse thought of, because I opposed what I thought an unreasonable and new Invention; My Lord, I know in the Case of the City of *London*, we had time to plead a whole Vacation after an Impar lance, and were not at all hurried on, as the King's Council would do in this Case; My Lord, if they can produce any Antient Precedent for it, I will say no more, but there is no Case in Print in any of our Books that ever I read or can remember, that countenances such an Opinion; a Man by this means may lose his just Defence, and he has no Remedy, nor will it ever be in his Power to retrieve it, for he may be brought on a sudden into Court upon a Warrant, and when he is here he shall be charged with an Information, and presently he must Plead not Guilty, because he has not time to prepare a Plea of any other Nature, let him have never so much other special Matter, or occasion for it; if you please to let this Matter be examined what the Precedents are, and what Age those Precedents are, then perhaps your Lordship will get some satisfaction; but otherwise, if the bare Certificate of the Master of the Office is to be a Guide to the Court, what is Law, and what is not, we shall be in a very uncertain Condition, especially when the Matter carries in the very Face of it a great deal of Unreasonableness and Injustice. They on the other side will argue that is not more unreasonable than the practice in the Case of Treason, and Felony, where Persons are compelled to Plead instantly.

instantly. But under Favour, My Lord, there is no Comparison between this Case and that, though I know it was always thought a hardship and defect in our Law, that a Person should be denied time to plead in Case of Life and Death, except he can shew some special Matter of Law that he has to Plead, and then he has always time allowed him to put it into Form; And I could never think there was any Reason to be given for it, but because the common Defences of Felons would be little Shifts and Arts, which would destroy proceedings, and make them tedious, and that would be an Encouragement to People to commit Felony; and beside there is a Trust which the Law reposes in the Court in Capital Cases, to take care that these Men should not suffer upon any little Tricks in Law; but if you come below Treason and Felony, the Law puts no such hardship upon the Defendant, nor reposes such a special Trust in the Court; but a Man may plead any thing he has to plead; And can any Man plead before he sees what he is to plead to? and shall the Law allow him Council to prepare his Plea, and not allow him time to consult with that Council about it? These are things, My Lord, that truly, to me seem unreasonable; But as to the practice and course of the Court, I pray your Lordship to give Order, that the Precedents may be searched, that you may know what the ancient Practice was.

Mr. Finch. Whether you will grant an Imparlance now or no, yet I hope however, you will think fit to give my Lords the Bishops time to plead.

Lord Ch. Just. But *Mr. Finch*, we have had a Certificate from *Sir Samuel Astrey*, which truly weighs

weighs a great deal with me; he tells you the Practice has been so ever since he came here, and that Mr. *Waterhouse* told him, that it had been so all his time, which is sixty Years.

Mr. Pollexfen. My Lord, there are Persons here that will upon their Oaths declare, That Mr. *Waterhouse* has often told them the Practice was otherwise, even in his time, and afterwards, a long time before this new way of Proceeding came in.

Mr. Ince. My Lord, if I might have Liberty to speak, I can say Mr. *Waterhouse* has told me---

Lord Ch. Just. Pray be quiet, Mr. *Ince.*

Mr. J. Allynbone. But pray Mr. *Pollexfen* give me leave to Mind you, how the Evidence stands against you; the Objections are, that this has been a Practice but for twelve Years last past; if that be true, I think it goes a great way, for the practice of twelve Years is Precedent enough, *Primâ Facie*, that such is the practice; for how shall we come to the Knowledge of the practice, but from our Officer Sir *Samuel Astry*, who has been here Examined? and he tells you, that upon his coming into the Office, when it could not be so doubtful as now (it seems) it is, he took Instructions from Mr. *Waterhouse*; I allow you 'tis but his Certificate, but that must go a great way with the Court.

Sir Rob. Sawyer. Such a Practice as this has been always very rare in Informations for Misdemeanours; and they bring you nothing of any Precedent older than Sir *Samuel Astry*'s time.

Mr. Finch. Pray, my Lord, give me leave to vary the Question. I do not now make it a Question, whether your Lordships should grant My Lords the Bishops an Imparance, but whether
you

you would think fit to look into the Course of the Court before that time, that Sir *Samuel Astry* speaks of, and take time to consider, and search into Precedents.

Mr. J. Allybone. Do you, Mr. *Finch*, give us any one Reason or Precedent, that may make us doubt whether this be the Course of the Court or no? And you could not but be aware of this before, and therefore should have come prepared to make out your Objection.

Mr. Finch. Mr *Pollexfen* and the rest of the Practisers in my Lord *Hales's* time will tell you that the Course was otherwise in his time; Sir *Samuel Astry* indeed tells you, it has been so since his time; but this was one of the Points (it seems) that he was ignorant of, which made him inquire of Mr. *Waterhouse*, so doubtful was this Practice.

Sir Samuel Astry. I was an Attender upon this Court before I came into this Office, but it was in another place on the other side of the Court; and therefore was not concerned so much to know what was the Course on this side, till I came into this Office.

Mr. Soll. Gen. These Gentlemen differ among themselves, one would have an Imparlance, the other only time to Plead; I believe truly they cannot tell well what they would have. I pray the Rules of the Court may be kept to.

Sir Samuel Astry. Here are two Clerks that sit by me, that have been a long time in the Office, Mr *Harcourt* my Secondary, and the Clerk of the Rules; I pray they may be ask'd their knowledge of this matter.

Mr. Soll. Gen. Certainly these Gentlemen think they have a Privilege above all other People, that
they

they must not be Subject to the same Rules, as others are; we on our Parts have taken all the Methods that we could to make this matter manifest, and what is it that these Gentlemen now propose? They pray you to take time to consider, but have they used the right means of creating a jealousy or suspicion in the Court, that the Course is otherwise? they can give no instance of it, and all they say is, 'tis a Negative, that this is not the Course of the Court, but the Imparlance that they beg is in the Affirmative, surely that they can find proof of, if it be so: As for my Lord *Holly's* Case, that is with us, and not against us; let Mr. *Pollexfen* shew that ever any one of the Men that were brought into Court in Custody either had time to Plead, or an Imparlance.

L. C. J. Sir *Samuel Astry* says he has given you his Opinion, and here are two other Clerks of the Office that he refers himself to, are you willing that they should be asked?

Mr. S. Pemberton. Yes my Lord, with all our Hearts.

L. C. J. Mr. *Harcourt*, How long have you been a Clerk in the Crown-Office?

Mr. Harcourt. About seventeen or eighteen Years, my Lord.

L. C. J. How long have you known the practice of the Court in this matter, and what is it?

Mr. Harcourt. I cannot charge my self so with Particulars from the time of my coming into the Office, but for these ten or twelve Years past (I remember) it has been as the King's Council pressed, and as Sir *Samuel Astry* has declared.

L. C.

L. C. J. What say you, *Mr. Sylliard*, how long have you known the Crown-Office?

Mr. Sillyard. I have been a Clerk here about thirty Years.

L. C. J. Well, and how has the Practice been all your time?

Mr. Sillyard. I have not sat here as Clerk of the Rules but a little while; but since I have sat here, I have always observed it to be the Practice, that one that comes in Custody should plead immediately. It was a thing heretofore that did not so often happen, as it hath done here of late, therefore I cannot so well speak to it; but it hath fallen out frequently within some Years last past, and that hath been the constant Course.

Sir Samuel Astry. When you first came to be *Attorney-General*, *Sir Robert Sawyer*, I am sure it was so.

Mr. Att. Gen. Pray let me ask you, *Mr. Sillyard*, you say you have known the Office thirty Years; When you first came to the Office, were Informations as frequent as they are now, and have been of late?

Mr. Soll. Gen. It was so in the Case of *Mr. Hampden*, when you were *Attorney-General*, *Sir Robert Sawyer*, he was forced to plead immediately to an Indictment, for a Crime that perhaps you will say was near upon Treason.

Sir Rob. Sawyer. Yes truly, it wanted but one Witness, that was all.

Mr. Soll. Gen. But yet the Indictment was only for a Misdemeanour, and there we struggled and debated the Matter, but were forced to give it over, because the Course of the Court was against us; so it has been by the unquestionable Testimony of *Sir Samuel Astry* for these twelve Years last past, and in those twelve Years we have had many
H Changes,

98 *The Tryal of the Seven Bishops.*

Changes, perhaps there may have been twelve Chief Justices, and they have all affirmed it; and if I then make it out, that in all these Judges times that are within our Remembrance it has gone thus, then there are enough of Precedents in the Matter.

Sir Rob. Sawyer. But, my Lord, I desire to know, whether that were the ancient Course, Mr. *Solicitor*?

Mr. Soll. Gen. They that make the Objection ought to prove it; but I will name, Sir *Robert Sawyer*, another Case, and that is the Case of Sir *Samuel Barnadiston*, which was the Case of a Libel too; he was forced to plead immediately, and it cost him 10000*l* Fine.

L. C. J. Well, Gentlemen, have you done on either Side?

Mr. S. Pemberton. If your Lordship will please to give us time till to Morrow Morning, we will come hither by Rule of Court, and bring you some Certificates and Affidavits, or else some Precedents, that we hope will satisfie your Lordship in this Matter.

L. C. J. No, Brother, we cannot do that: The Question is what the Course of the Court is; we have had an Account of that from Sir *Samuel Astry* for twelve Years of his own Knowledge, and from Mr. *Waterhouse* by him for sixty Years; but for Mr. *Waterhouse* they except against him, and say he was a Person that was always lazy, and did not so well understand his Business, and now is superannuated; that is said, but is but *gratis dictum*; perhaps it may be so, perhaps not; and they have offered to examine Mr. *Ince* about some Opinion that he has had from this Mr. *Waterhouse*; it may be he may have asked him some Question that may lead to it, and he may have given some slight Answer,

Answer, but then here are these two Persons, Mr. *Harcourt* and Mr. *Sillyard*, and the one has been a Clerk these sixteen or seventeen Years, and the other has known the Office thirty Years; though there were not heretofore so many Informations of this Nature and Kind as now of late, but still they say, that a Person that comes in upon a Commitment, or a Recognizance, shall never have any Imparlance.

Mr. Soll. Gen. Can they give any one Instance that has any the least Shadow to the contrary?

Mr. Pollexfen. My Lord, if we had time, we hope we should be able to satisfie you in this Matter.

Mr. Soll. Gen. You have had time enough to prepare your selves for this Question, if you had thought you could do any good in it.

L. C. J. Would the Course of the Court be otherwise to Morrow than it is to Day? We have taken all the Care we can to be satisfied in this Matter, and we will take Care that the Lords the Bishops shall have all Justice done them, nay, they shall have all the Favour, by my Consent, that can be shewn them, without doing wrong to my Master the *King*; but truly I cannot depart from the Course of the Court in this Matter, if the King's Council press it.

Mr. Att. Gen. My Lord, we must pray your Judgment in it, and your Direction, that they may plead.

L. C. J. Truly I think they must plead to the Information.

Mr. Att. Gen. Sir *Samuel Astry*, pray ask my Lords whether they be Guilty or Not Guilty.

Then his Grace the Lord Archbishop of Canterbury stood up, and offered a Paper to the Court.

100 *The Tryal of the Seven Bishops.*

Archb. of Cant. My Lord, I tender here a short Plea, (a very short one) on Behalf of my self and my Brethren the other Defendants; and I humbly desire the Court will admit of this Plea.

L. C. J. If it please your Grace, it should have been in Parchment.

Mr. Soll. Gen. What is that my Lord offers to the Court?

L. C. J. We will see what it is presently, Mr. Solicitor.

Bish. of Peter. I pray, my Lord, that the Plea may be read.

Mr. Soll. Gen. But not received.

Mr. Att. Gen. No, we desire to know what it is first.

Sir Rob. Sawyer. Mr. Attorney, if they will plead, the Court sure is obliged to receive it.

L. C. J. If it is a Plea, your Grace will stand by it?

Archb. of Cant. We will all stand by it, my Lord; it is subscribed by our Council, and we pray it may be admitted by the Court.

Mr. S. Pemberton. I hope the Court will not deny to receive a special Plea, if we offer one.

L. C. J. Brother, let us hear what it is.

Mr. Soll. Gen. Read it if you please, but not receive it.

Clerk reads the Plea, which in English is thus.

THE BISHOPS PLEA.

AND the *aforesaid* William Archbishop of Canterbury, William Bishop of St. Asaph, Francis Bishop of Ely, John Bishop of Chichester, Thomas Bishop of Bath and Wells, Thomas Bishop of Peterburgh, and Jonathan Bishop of Bristol, being present here in Court in their own Persons, pray Oyer of the Information *aforesaid*; and it is Read to them, which being read, and heard by them the said Archbishop, and Bishops: The said Archbishop and Bishops say, that they are Peers of this Kingdom of England, and Lords of Parliament, and each of them is one of the Peers of this Kingdom of England, and a Lord of the Parliament, and that they being (as before is manifest) Peers of this Kingdom of England, and Lords of Parliament, ought not to be compelled to answer instantly for the Misdemeanour *aforesaid*, mentioned in the said Information exhibited here against them in this Court; but they ought to be required to appear by due Process in Law issuing out of this Court here upon the Information *aforesaid*, and upon their Appearance to have a Copy of the said Information exhibited against them, and reasonable time to imparl thereupon, and to advise with Council Learned in the Law, concerning their Defence in that behalf, before they be compelled to answer the said Information; Whereupon, for that the said Archbishop, and Bishops were Imprisoned, and by Writ of our Lord the King, of Habeas Corpus, directed to the Lieutenant of the Tower of London, are now brought here in Custody, without any Process upon the Information *aforesaid* issued against them, and without having any Copy of the said Information, or any time given them to imparl, or be advised; They pray Judgment, and

102 *The Tryal of the Seven Bishops.*

the Privilege of Peers of this Kingdom, in this Case to be allowed them; and that They the said Archbishop, and Bishops, may not be compelled instantly to answer the Information aforesaid, &c.

Rob. Sawyer.

Hen. Finch.

Hen. Pollexfen.

Mr. Att. Gen. My Lord, with your Lordship's Favour, this in an ordinary Person's Case, would perhaps be thought not fair Dealing, or that which (it being in the Case of these Reverend Prelates) I shall not now name; to make all this Debate and Stir in a Point of this Nature, to take the Judgment of the Court after three or four Hours arguing, and when the Opinion of the Court has been delivered, then to put in a Plea to the Jurisdiction of the Court, ———

Sir Rob. Sawyer. It is no such Plea.

Mr. Att. Gen. It is so in effect, but certainly it is such an Irregularity, and such an unfair way of Proceeding, as would not be endured in an ordinary Case, and I hope you will give so little Countenance to it, as to reject it, and make them plead according to the usual Course and way of Proceedings; certainly a Plea of this Nature, after so long an Argument, would be reckoned nothing but a Trick.

Mr. Serj. Pemb. We hope the Court and you are not of one Mind *Mr. Attorney* in this Matter, we desire the Court to receive the Plea.

Mr. Att. Gen. With Submission, the Court is not bound to receive Pleas, that are put in purely for Delay, as this is; for the Judgment of the Court has been already given in the very Matter of this Plea; and for rejecting a Plea, it is done every Day, if a Man puts in a meer trifling dilato-

latory Plea, the Court may reject it; Does this Plea contain any thing in it, but what has been argued and debated *pro & con*, and settled by the Court already? If they will put in any Plea in chief they may, but such a Plea as this, I hope shall not have so much Countenance, as to be receiv'd by the Court.

Mr. Pollexfen. Do you Demur to it, if you please, *Mr. Attorney*, we will join in Demurrer with you.

Mr. Att. Gen. No, there will be no need of that.

Mr. Soll. Gen. Surely the Court will never give so much Countenance to it, as to receive it.

Mr. Finch. If you will please either to Reply or Demur, *Mr. Solicitor*, we are here to maintain the Plea.

Mr. Soll. Gen. If you were here you would say the same thing that we do; My Lord, this Plea is, That my Lords the Bishops are not bound to Plead instantly; so that 'tis not a Question, Whether they ought to answer, or not to answer, but whether they ought to answer immediately, and what do they say more? They would have an Imparlance, and time to consult with their Council what they shall plead, which is all but one and the same thing; and what is the Reason they give for this? They induce it thus, These Noble Persons are Peers of the Realm, and so ought not to be compelled to plead immediately; this, if I mistake not, is the Sum of their Plea. Now pray my Lord, what sort of Plea is this? It is not a Plea to the Jurisdiction of the Court, tho' it do in a sort decline the Justice of the Court? Is it a Plea in Abatement? No, it is not, for it is only to gain time, and do they now offer any thing more for themselves, than what was said by their Council before? Only, That we are Peers

of the Realm, and that such is the Privilege of Peers, that they ought to have an Imparlançe, and time to plead, and that they ought not to answer presently: My Lord, this Matter hath been long agitated in the Court already, your Lordship and the Court have given your Judgments, and we know your Lordship and the Court will not admit of Tricks to delay the King's Causes; we all know the Term is a short Term, and what I said in the Beginning upon this Matter, I say again, it is the Interest, and for the Honour of my Lords the Bishops (if they understand their own Interest, and value their Honour) to have this Cause tryed as soon as may be; but this trifling and tricking is only for Delay: For what Issue can be taken upon this Plea? Certainly none; and if we should demur, what will be the End of that? But only to get time to slip over the Term. If there were any thing worth the considering in this Plea, and that had not been already debated and settled, then it might concern us to give some Answer to it; but we have spent three Hours (by my Watch) in the Dispute, and the Matter having been over-ruled already, it is time to have an End of it; sure the Court will never be so treated by these Persons, that are of Council for my Lords the Bishops, for it cannot be thought that my Lords the Bishops do it of themselves: and whether the Court will be so served, we submit to your Lordship. Certainly you will not receive such a Plea as this, especially it being in Paper, you will never countenance such a Practice, so far as to give these Lords time to trifle with the Court; if any such thing as a Plea be tender'd to the Court, it ought to be in Parchment, and if they would have an Imparlançe, there ought to have been an Entry of a *Petit*
Licentiam

Licentiam inter loquendi upon the Roll, but not such a Plea as this, for this in effect is no more than desiring an Imparance, which if it be granted of Course, upon such a Prayer entred upon the Roll, you take it of Course; but if it be not of Course, you cannot come in by way of Plea, it must be by Suggestion upon the Roll, and a *Conceditur* entred; if this be admitted as a Precedent, every Man hereafter that comes in upon an Information, will take advantage of it, and plead such a Plea as this, and if you grant an Imparance in this Case upon this Plea, you must grant an Imparance in every Case; certainly the Law is not to be altered, the Methods of Proceedings ought to be the same in every Case: And I hope you will not make a particular Rule in the Case of my Lords the Bishops, without a special Reason for it.

Mr. Serj. Pemb. We put in this Plea, my Lord, and are ready to abide by it, and we say, that according to the Course of the Court, it ought to be received.

Mr. Att. Gen. No, but good *Mr. Serjeant*, 'tis in the Discretion of the Court, whether they will receive it or not, for the Matter has been in debate already, and has receiv'd a Determination; the Court has over-ruled them in this very Point already, and there is no more in this Plea, than was in the Argument before, and therefore it ought to be rejected as a frivolous Plea.

Mr. Soll. Gen. Here is a Plea offered in Writing, and in Paper, the Court sees what it is, and I hope you will give no Countenance to it.

Mr. Pollexfen. I do hope, my Lord, you will not judge this as a frivolous Plea; I think our Case is such, that you will not do that, if you think
fit

fit you may over-rule it, but I hope you will not refuse it.

Mr. Soll. Gen. The Court will certainly reject a frivolous Plea, and they may do it.

Mr. Pollex. But *Mr. Solicitor*, I hope the Court will consider of it, whether it be a frivolous Plea or not; it is true, there has been a Debate about the Course of the Court, and there has been an Examination of the Clerk of the Office, and the Court has gone upon his Certificate, but yet still perhaps it may remain in Doubt, and it being a Question of such a Consequence as this, it may very well deserve the Court's Consideration; there never was a judicial Settlement of it (that I know of yet) nor do I know any way of having it satisfactorily settled, but by the Judgment of the Court entered upon Record; here we offer a Plea that contains the Matter in Debate, and this Plea will appear upon Record, and if upon Consideration of the Plea your Lordship shall think fit to over-rule it, and be of Opinion against the Plea, then will you by your Resolution in a judicial way, settle the Question that has hitherto been in Controversie.

L. C. J. Mr. Pollexfen, I would ask you whether the Council have dealt ingenuously with the Court or no in this Matter; after four Hours debate, and the Opinion of the Court delivered, to come and Sum up all the Arguments in such a Plea as this, and so put us upon debating it over again?

Mr. Pollex. My Lord, certainly this has been done before, without Offence, after we had moved for a thing which was denied upon Motion, it is no such great Dis-respect to the Court (with Submission) to put the same Matter into a Plea, for the Judicial Opinion of the Court.

Sir

Sir Rob. Sawyer. That without all Question has been done a great many times.

Mr. Sol. Gen. How many times have you been accused of playing Tricks, *Sir Robert Sawyer?*

Sir Rob. Sawyer. Not so many as you, *Mr. Solicitor.*

Mr. Soll. Gen. I don't ask it as if I questioned it, for I assure you I don't doubt it of your Part at all.

L. C. J. Pray Gentlemen don't fall out with one another at the Bar, we have had time enough spent already.

Mr. Pollex. Truly, my Lord, I would not trick with the Court in any Case, nor on the other Side would I be wanting to advise and do for my Client, what I am able and lawfully may; we have laboured all we could to get time for my Lords the Bishops to Imparle to this Information, and we have been the more earnest in it, because it concerns us, who attend this Bar, to take what Care we can, that the Course of the Court may be observed; but as for this Matter, we suppose this Practice of the Court is not in Law a good Practice; Now what way in the World has any Man to bring this so in question, as to have a judicial Resolution of the Court about it, but by such a Plea? We take it, that it is usual and legal for us to have an Imparlance, and a Man would imparle, but the Court upon Motion refused to give him an Imparlance; Is it not (think you) very fit for the Party to have this judicially entered upon Record? where all this Matter will appear, and the Party may be relieved by writ of Error, if the Judgment of the Court should be wrong; but truly I cannot see how the Court can refuse the Plea, for if so be a Plea be pleaded, they have their Liberty to answer it on the other side by a Replication, or else to Demur, and the Judgment

ment of the Court may be had upon it one way or other, but the Court will never go about to hinder any Man from pleading where he may plead by Law; here is a Plea put in, and the Court sure will take no Notice what is the Matter of the Plea, 'till the other Party have either reply'd or demurred; the same thing may happen in any other Plea that is pleaded, and the Party will be without Remedy upon a Writ of Error, because the Plea being rejected, there does nothing appear upon Record; truly for the Court to reject and refuse this Plea, would be as hard as the refusing of the Impar lance, and we know no way we have to help our selves.

Mr. Soll. Gen. You might have entered your Suggestion for an Impar lance upon the Roll, and then it would have appeared upon Record, and if the Court had unjustly denied it you, you would have had the Benefit of that Suggestion elsewhere: Truly, my Lord, I think if any thing be tricking, this is, for it is plainly ill pleading.

Mr. Finch. Then pray demur to it.

Mr. Soll. Gen. No Sir, 'tis Fencing with the Court, and that the Court won't suffer, it is only to Delay, and if we should demur, then there must be time for arguing; and what is the Question after all, but whether you would be of the same Opinion to Morrow, that you are to Day?

Sir Rob. Sawyer. I would put Mr. *Sollicitor* in Mind of *Fitz Harris's* Case, which he knows very well, he put it in a Plea, and we for the King desired it might not be received, but the Court gave him time to put it into Form, and I was fain to join in Demurrer presently, and so may these Gentlemen do if they please.

Mr. Soll.

Mr. Soll. Gen. Yes Sir *Robert Sawyer*, I do know the Case of *Fitz Harris* very well. I was assigned of Council by the Court for him, we were four of us, and there was a Plea put in, but no such Plea as this; there was an Indictment of High Treason against him, in which Case it is agreed on all hands, that the Party must answer presently, but because he suggested here at the Bar, (says he) I have Matter to plead to the Jurisdiction of the Court, and shewed what it was, I was Impeached before the Lords in Parliament for Treason, for the same Matter of which I am here Accused: The Court did give him time to put this into Form, and we were assigned his Council to draw it up for him, and accordingly we did put that Matter into a Plea, that we were here Indicted for one and the same Treason, for which we were Impeached in Parliament, and that that Impeachment was still depending, and so we rested in the Judgment of the Court, whether we should be put to Answer it here; this was a Plea that carried something of weight in it, and not such a trifling one as this. It is true, Sir *Robert Sawyer*, who was then *Attorney General*, did press the Court to overrule it immediately, but it being a matter of some Importance, the Court would not do that, but had it argued solemnly by Council on both sides, and at last there was the Opinion of three Judges against one that the Plea was no good Plea. But what is that to such a trifling Plea as this?

Mr. Att. Gen. Pray my Lord favour me a few words about that Case of Mr. *Fitz Harris*. It is true, there was a Plea put in, and it is true also, that that which brought that Plea to be argued, was the Demurrer that was put in by Sir *Robert Sawyer*, who was so zealous and hasty in the matter, that because the Court did not presently overrule

110 *The Tryal of the Seven Bishops.*

rule the Plea, as he desired, he immediately Demurred, before the rest of the King's Council could offer at any thing about it; and thereupon it was put to the Judgment of the Court, and no doubt must be argued, and spoke to on both sides; but where Pleas are really in abuse of the Court, the Court never gives any Countenance to them: Nay, truly I have known another Course taken, I am unwilling to mention a Case that hapned much about that time too in this Court, because of that regard I have to my Lords the Bishops, but Sir *Robert Sawyer* remembers it very well, I am sure; it was the Case of one *Whitaker*, who for a thing like this putting in a trifling Plea, not only had his Plea rejected, but something else was ordered, I could shew the Precedent, but that I am more tender than to press it in this Case, because there the Court ordered an Attachment to go against him; but I will put these Gentlemen in mind of another Case, and that is the Case of a Peer too, it is the Case of my Lord *Delameere*, which they cannot but remember, it being in the highest Case, a Case of Treason; when my Lord *Delameere* was Arraigned and to be Tryed for High Treason, he put in a Plea before my Lord *Chancellor*, who was then *High Steward*, and Sir *Robert Sawyer*, who was then *Attorney General*, prayed the Lord *Steward* and the Peers to reject it, and the Court did reject it, (as we hope the Court will do this) and would never so far delay Justice as to admit of a Plea that carried no Colour in it, and there was no Demurrer put into the Plea, but it was absolutely refused: My Lord, in this Case we have had the Judgment of the Court already, and therefore we must now desire that this Plea may be rejected.

Mr.

The Tryal of the Seven Bishops. 111

Mr. Soll. Gen. My Lord, we have now gone out of the way far enough already; it is time for us to return, and bring the Case into its due methods. We pray your Lordship to reject this Plea.

Sir. Rob. Sawyer. My Lord, we are in your Judgment, whether you will receive this Plea or not.

L. C. J. You shall have my Judgment presently; but my Brothers are to speak first.

Mr. J. Allybone. Mr. Pollexfen makes it a Question, whether this Plea may be rejected or not, or whether it ought to be received, and the Court give their Judgment upon it.

Mr. Just. Powell. Truly I do not know whether the Court can reject this, as a frivolous Plea.

L. C. J. Surely we may and frequently do.

Mr. Att. Gen. You do it every day, it's a frequent Motion; if a frivolous Plea be put in, before it be entered upon Record as a Plea, the Court may refuse it, if they see cause.

Mr. J. Allybone. Truly if it may be, this appears to me a very frivolous Plea.

Mr. Just. Powell. I do not know how the Court can reject any Plea that the party will put in, if he will stand by it, as they say they will here; and I cannot think this a frivolous Plea, it concerning the privilege of Peers, and Lords of Parliament.

Mr. J. Allybone. Brother Powell, I would be as tender of the Privileges of Parliament, and speak with as much respect of the Privileges of the Peerage, as any body else; but for the matter of the Plea, truly it appears to me, that the Peers are named in it only for fashion sake, and it is frivolous.

Mr. Just. Powell. The matter of the Plea, except only their being said to be Peers and Lords of Parlia-

112 *The Tryal of the Seven Bishops.*

Parliament, was spoke to before, but it was only *obiter*, and by way of motion; but now it may come before us for our Judicial Determination.

Mr. J. Allybone. Pray let the Plea be read again.
[*which was done.*]

Mr. Just. Allybone. This Plea is no more but that which has been denied already upon solemn debate, and if it be in the power of the Court to reject any Plea, surely we ought to reject this. Indeed I know not what power we have to reject a Plea; but if we have power, this ought to be rejected.

Mr. Just. Powell. I declare my Opinion, I am for receiving the Plea, and considering of it.

Mr. Just. Holloway. I think as this Case is, this Plea ought not to be received, but rejected, because 'tis no more than what has been denied already. I am not ashamed to say, That I should be very glad and ready to do all things that are consistent with my Duty, to shew respect to my Lords the Bishops, some of whom are my particular Friends; but I am upon my Oath, and must go according to the course of Law.

L. C. J. We have asked and informed our selves from the Bar, whether we may or can reject a Plea, and truly what they have said, hath satisfied me that we may, if the Plea be frivolous; and this being a Plea that contains no more than what has been over-ruled already, after hearing what could be said on both sides, I think the Court is not bound to receive the Plea, but may reject it, and my Lords the Bishops must plead over.

Mr. Att. Gen. We pray they may plead in chief.

Clerk. My Lord Archbishop of *Canterbury*, is your Grace guilty of the matter charged upon you in this Information, or not guilty?

A. B. Cant. Not Guilty.

Clerk.

The Tryal of the Seven Bishops. 113

Clerk. My Lord Bishop of *St. Asaph*, is your Lordship guilty of the matter charged upon you in this Information, or not guilty?

Bish. of St. Asaph. Not guilty.

Clerk. My Lord Bishop of *Ely*, is your Lordship guilty of the matter charged upon you in this Information, or not guilty?

Bish. of Ely. Not guilty.

Clerk. My Lord Bishop of *Chichester*, is your Lordship guilty of the matter charged upon you in this Information, or not guilty?

Bish. of Chichester. Not guilty.

Clerk. My Lord Bishop of *Bath and Wells*, is your Lordship guilty of the matter charged upon you in this Information, or not guilty?

Bish. of Bath & Wells. Not Guilty.

Clerk. My Lord Bishop of *Peterborough*, is your Lordship guilty of the matter charged upon you in this Information, or not guilty?

Bish. of Peterborough. Not guilty.

Clerk. My Lord Bishop of *Bristol*, is your Lordship guilty of the matter charged upon you in this Information, or not guilty?

Bish. of Bristol. Not guilty.

Mr. Att. Gen. My Lord, I pray the Clerk may joyn Issue on the behalf of the King, that so we may come to Tryal; and we would have these Gentlemen take notice, that we intend to try this Cause on this day fortnight, and we pray liberty of the Court, that we may try it at Bar.

L. C. Just. Are you not too hasty in that Motion, Mr. Attorney?

Mr. Att. Gen. My Lord, we should indeed make it the Motion of another day; but we do now tell them this *ex abundanti*, because my Lords the Bishops are now here, and will I suppose take notice that we do intend to move it another day.

114 *The Tryal of the Seven Bishops.*

Mr. Soll. Gen. We now give them notice, that we intend to move.

Sir Rob. Sawyer. For that you need not trouble your selves; we are very desirous it should be tryed at Bar, and that as soon as you please.

Mr. Att. Gen. Well then you take notice it will be tryed this day fortnight.

L. C. J. Well, what shall we do with my Lords the Bishops?

Mr. Att. Gen. They are baylable, no question of it, my Lord, if they please.

L. C. J. Then, My Lords, we are ready to bail you, if you please.

Sir Rob. Sawyer. We desire your Lordship would be pleased to take their own Recognizance.

L. C. J. What say you, Mr. Attorney? I think that may do well enough.

Mr. Att. Gen. My Lord, with all my heart, we will do it.

L. C. J. In what Penalty shall we take it?

Mr. Att. Gen. 1000*l.* I think my Lord his Grace, and 500*l.* apiece the rest.

Sir Rob. Sawyer. What necessity is there for so much?

Mr. Att. Gen. Look you, Sir Robert Sawyer, to shew you that we do insist upon nothing that shall look like hardship, what my Lords have been pleased to offer, concerning taking their own Recognizance, we agree to, and what Sums the Court pleases.

Mr. Soll. Gen. It is all one to us, we leave it wholly to the Court.

Sir Rob. Sawyer. Only I have one thing more to beg of your Lordship on the behalf of my Lords the Bishops, that you will please to order, that in the Return of the Jury there may be forty eight returned.

Mr.

Mr. Att. Gen. I tell you what we will do, Sir *Samuel Astry* shall have the Freeholders Book, if you please, and shall return twenty four.

Sir Rob. Sawyer. Eight and forty has been always the course, when the Jury is returned by Sir *Samuel Astry*.

Mr. Soll. Gen. My Lord, I pray the Officer may return the Jury, according as is usual in Cases of this nature.

Mr. Att. Gen. You do admit of a Tryal at Bar, Gentlemen?

Sir Robert Sawyer. Yes, and try it when you will.

L. C. J. They say it shall be this day fortnight, and let there be a Jury according to the usual course.

Sir Rob. Sawyer. We pray it may be in the presence of the Attorneys or Solicitors on both sides.

L. C. J. What is the usual course, Sir *Samuel Astry*? Do you use to return twenty four, or forty eight, and then strike out twelve a piece, which I perceive they desire for the Defendants?

Sir Sam. Astry. My Lord, the course is both ways, and then it may be as your Lordship and the Court will please to order it.

L. C. J. Then take forty eight, that is the fairest.

Mr. Att. Gen. We agree to it; we desire nothing but a fair Jury.

Sir Rob. Sawyer. Nor we neither, try it when you will.

L. C. J. Take a Recognizance of his Grace my Lord of *Canterbury* in 200*l.* and the rest of my Lords in 100*l.* a piece.

Mr. Att. Gen. What your Lordship pleases for that, we submit to it.

Clerk. My Lord of *Canterbury*, your Grace acknowledges to owe unto our Sovereign Lord the

116 *The Tryal of the Seven Bishops.*

King the sum of 200*l.* upon condition that your Grace shall appear in this Court on this day fortnight, and so from day to day, till you shall be discharged by the Court, and not to depart without leave of the Court. Is your Grace contented?

A. B. Cant. I do acknowledge it.

Clerk. My Lord Bishop of *St. Asaph*, you acknowledge to owe unto our Sovereign Lord the King, the sum of 100*l.* upon condition that your Lordship shall appear in this Court on this day fortnight, and so from day to day, until you shall be discharged by the Court, and not to depart without leave of the Court. Is your Lordship contented?

Bish. of St. Asaph. I do acknowledge it.

The like Recognizances were taken of all the rest of the Bishops, and then the Court arose.

*De Termino Sanctæ Trinitatis,
Anno Regni Jacobi Secundi Re-
gis, Quarto, In Banco Regis.*

*Die Veneris, vicesimo nono die Junii, 1688.
in eod' Term'.*

(Being the Feast of St. *PETER* and
St. *PAUL*.)

Dominus Rex versus Archiep. Cantaur. & al.

Sir Robert Wright Lord	} Judges.
Chief Justice	
Mr. Justice Holloway	
Mr. Justice Powell	
Mr. Justice Allybone	

Clerk. **C**Ryer, make Proclamation thrice.
Cryer. O yes! O yes! O yes! Our
Sovereign Lord the King streightly
charges and commands every one to keep Silence,
upon pain of Imprisonment.

Cl. of the Cr. Call the Defendants.

118 *The Tryal of the Seven Bishops.*

Cryer. William Lord Archbishop of Canterbury.
Archbisch. Here.

Cryer. William Lord Bishop of St. Asaph.

Bish. St. Asaph. Here. (And so the rest of the Bishops were called, and answered severally.)

Clerk. Gardez votres Challenges. — Swear Sir Roger Langley.

Cryer. Take the Book, Sir Roger. You shall well and truly try this Issue between our Sovereign Lord the King, and William Lord Archbishop of Canterbury, and others, according to your Evidence. So help you God.

The same Oath was administred to all the Jury, whose Names follow, (*viz.*)

Sir Roger Langley, Bar.	William Avery, Esq;
Sir William Hill, Knt.	Thomas Austin, Esq;
Roger Jennings, Esq;	Nicholas Grice, Esq;
Thomas Harriot, Esq;	Michael Arnold, Esq;
Jeoffery Nightingale, Esq;	Thomas Done, Esq;
William Withers, Esq;	Richard Shoreditch, Esq;

Clerk. You Gentlemen of the Jury who are sworn, hearken to the Record; Sir Thomas Powis, Knight, His Majesty's Attorney-General, has exhibited an Information, which does set forth as followeth:

ff. **M**emorandum, That Sir Thomas Powis, Knt. Attorney-General of our Lord the King, who for our said Lord the King in this behalf prosecutes, came here in his own person into the Court of our said Lord the King, before the King himself at *Westminster*, on Friday next after the morrow of the *Holy Trinity* in this Term; and, on behalf of our said Lord the King, giveth the Court here to understand, and be informed, That our said

The Tryal of the Seven Bishops. 119

said Lord the King, out of his signal Clemency, and gracious intention towards his Subjects of his Kingdom of *England*, by his Royal Prerogative, on the fourth day of *April*, in the third Year of the Reign of our said Lord the King, at *Westminster* in the County of *Middlesex*, did publish his Royal Declaration, entituled, *His Majesty's Gracious Declaration to all his Loving Subjects for Liberty of Conscience*, bearing date the same day and year, sealed with the Great Seal of *England*; in which Declaration is contained, JAMES R. prout in the first Declaration before recited.

And the said Attorney-General of our said Lord the King, on behalf of our said the Lord the King, further giveth the Court here to understand and be informed, That afterwards, to wit, on the twenty-seventh day of *April*, in the fourth year of the Reign of our said Lord the King, at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, our said Lord the King, out of his like Clemency, and gracious intention towards his Subjects of his Kingdom of *England*, by his Royal Prerogative, did publish his other Royal Declaration, entituled, *His Majesty's Gracious Declaration*, bearing date the same day and year last mentioned, sealed with his Great Seal of *England*; in which Declaration is contained, JAMES R. *Our Conduct has been such, &c.* prout in the second Declaration before recited.

Which said Royal Declaration of our said Lord the King last mentioned, our said Lord the King afterwards, to wit, on the thirtieth day of *April*, in the fourth year of his Reign aforesaid, at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, did cause to be printed and published throughout all *England*; and for the more solemn Declaring, Notification, and Manifestation of his Royal

I 4 Grace,

120 *The Tryal of the Seven Bishops.*

Grace, Favour, and Bounty towards all his Liege-people, specified in the Declaration last mentioned, afterwards, to wit, on the fourth day of *May*, in the fourth year of his Reign, at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, our said Lord the King in due manner did Order as followeth:

At the Court at *Whitehall* the Fourth of *May*, 1688.

By the King's most Excellent Majesty, and the Lords of his Majesty's most Honourable Privy-Council.

I*t is this day Ordered by His Majesty in Council, That His Majesty's late Gracious Declaration bearing date the Twenty Seventh of April last, be read at the usual time of Divine Service upon the Twentieth and Twenty Seventh of this Month, in all Churches and Chappels within the Cities of London and Westminster, and Ten Miles thereabout: And upon the Third and Tenth of June next in all other Churches and Chappels throughout this Kingdom. And it is hereby further Ordered, That the Right Reverend the Bishops cause the said Declaration to be sent and distributed throughout their several and respective Diocesses, to be read accordingly.*

Wm. Bridgeman.

And further, the said Attorney-General of our said Lord the King, on behalf of our said Lord the King, giveth the Court here to understand and be informed; That after the making of the said Order,

Order, to wit, on the eighteenth day of *May*, in the fourth year of the Reign of our said Lord the King, at *Westminster* aforesaid, in the County of *Middlesex* aforesaid, *William* Archbishop of *Canterbury*, of *Lambeth* in the County of *Surrey*; *William* Bishop of *St. Asaph*, of *St. Asaph* in the County of *Flynt*; *Francis* Bishop of *Ely*, of the Parish of *St. Andrew Holbourn* in the County of *Middlesex*; *John* Bishop of *Chichester*, of *Chichester* in the County of *Sussex*; *Thomas* Bishop of *Bath and Wells*, of the City of *Wells* in the County of *Somerset*; *Thomas* Bishop of *Peterburgh*, of the Parish of *St. Andrew Holbourn* in the County of *Middlesex*; and *Jonathan* Bishop of *Bristol*, of the City of *Bristol*, did consult and conspire among themselves to diminish the Regal Authority and Royal Prerogative, Power and Government of our said Lord the King in the premises, and to infringe and elude the said Order; and in prosecution and execution of the Conspiracy aforesaid, They the said *William* Archbishop of *Canterbury*, *William* Bishop of *St. Asaph*, *Francis* Bishop of *Ely*, *John* Bishop of *Chichester*, *Thomas* Bishop of *Bath and Wells*, *Thomas* Bishop of *Peterburgh*, and *Jonathan* Bishop of *Bristol*, on the said eighteenth day of *May*, in the fourth year of the Reign of our said Lord the King aforesaid, with Force and Arms, &c. at *Westminster* aforesaid in the County of *Middlesex* aforesaid, falsely, unlawfully, maliciously, seditiously, and scandalously, did frame, compose, and write, and caused to be framed, composed, and written, a certain false, feigned, malicious, pernicious and seditious Libel in writing, concerning our said Lord the King, and his Royal Declaration and Order aforesaid, (under pretence of a Petition) and the same false, feigned, malicious, pernicious, and seditious Libel, by them the aforesaid *William* Archbishop of *Canterbury*, *William* Bishop of *St. Asaph*, *Francis* Bishop of *Ely*,
John

122 *The Tryal of the Seven Bishops.*

John Bishop of Chichester, Thomas Bishop of Bath and Wells, Thomas Bishop of Peterburgh, and Jonathan Bishop of Bristol, with their own hands respectively being subscribed, on the day and year and in the place last mentioned, in the presence of our said Lord the King, with Force and Arms, &c. did publish, and cause to be published; in which said false, feigned, malicious, pernicious and seditious Libel is contained, The humble Petition, &c. prout before in the Petition, to these words, [reasonable construction,] in manifest contempt of our said Lord the King, and of the Laws of this Kingdom, to the evil example of all others in the like case offending, and against the Peace of our said Lord the King, his Crown and Dignity, &c. Whereupon the said Attorney-General of our said Lord the King, on behalf of our said Lord the King, prays the Advice of the Court here in the premises, and due Process of Law to be made out against the aforesaid William Archbishop of Canterbury, William Bishop of St. Asaph, Francis Bishop of Ely, John Bishop of Chichester, Thomas Bishop of Bath and Wells, Thomas Bishop of Peterburgh, and Jonathan Bishop of Bristol, in this behalf, to answer our said Lord the King in and concerning the premises, &c.

T. Powys.

W. Williams.

To this Information the Defendants have pleaded *Not Guilty*, and for their Tryal have put themselves upon their Country, and his Majesty's Attorney-General likewise, which Country you are: Your Charge is to enquire whether the Defendants, or any of them, are guilty of the Matter contained in this Information that hath been read unto

unto you, or Not Guilty: If you find them, or any of them, Guilty, you are to say so; and if you find them, or any of them, Not Guilty, you are to say so; and hear your Evidence. Cryer, make Proclamation.

Cryer. O yes! If any one will give Evidence on behalf of our Sovereign Lord the King against the Defendants of the Matters whereof they are impeached, let them come forth, and they shall be heard.

Mr. Wright. May it please your Lordship, and you Gentlemen of the Jury, this is an Information exhibited by his Majesty's Attorney-General against the most Reverend my Lord Arch-Bishop of *Canterbury*, and six other honourable and Noble Bishops in the Information mentioned. And the Information sets forth, That the King, out of his Clemency and benign Intention towards his Subjects of this Kingdom, did put forth his Royal Declaration, bearing Date the fourth Day of *April* in the third of his Reign, entituled, *His Majesty's Gracious Declaration to all his Loving Subjects for Liberty of Conscience*; and that afterwards, the twenty seventh of *April*, in the fourth Year of his Reign, he published another Declaration, both which have been read to you; and for the further Manifestation and Notification of his Grace in the said Declaration bearing Date the twenty-seventh of *April* last, his Majesty did order, That the said Declaration should be read on the twentieth and twenty-seventh of the same Month, in the Cities of *London* and *Westminster*, and ten Miles about, and on the third and tenth of *June*, throughout the whole Kingdom; and that the Right Reverend the Bishops should send the said Declaration to be distributed throughout their Respective Diocesses, to be read accordingly. But that

that the said Archbishop and Bishops the eighteenth of *May*, in the said fourth Year of his said Majesty's Reign, having conspired and consulted among themselves to diminish the King's Power and Prerogative, did falsely, unlawfully, maliciously, and scandalously, make, compose, and write, a false, scandalous, malicious, and seditious Libel, under Pretence of a Petition: which Libel they did publish in the Presence of the said King; the Contents of which Libel you have likewise heard read. To this they have pleaded Not Guilty: You, Gentlemen, are Judges of the Fact; if we prove this Fact, you are to find them Guilty.

Mr. Att. Gen. May it please your Lordship, and you Gentlemen of the Jury, you have heard this Information read by the Clerk, and it has been likewise opened to you at the Bar; but before we go to our Evidence, perhaps it may not be amiss for us, that are of Council for the King, now in the Beginning of this Cause, to settle the Question right before you, as well to tell you what my Lords the Bishops are not prosecuted for, as what they are; First, I am to tell you, and I believe you cannot your selves but observe, that my Lords are not prosecuted as Bishops, nor much less are they prosecuted for any Point or Matter of Religion, but they are prosecuted as Subjects of this Kingdom, and only for a temporal Crime, as those that have injur'd and affronted the King to his very Face; for it is laid to be done in his own Presence: In the next place, they are not prosecuted for any Nonfeasance, or not doing or omitting to do any thing, but as they are Actors, for censuring of his Majesty and his Government, and for giving their Opinion in Matters wholly relating to Law and Government; and I cannot omit here to take notice, that there is not any one thing,

thing, which the Law is more jealous of, or does more carefully provide for the prevention and punishment of, than all Accusations and Arraignments of the Government: No Man is allowed to accuse even the most inferior Magistrate of any Misbehaviour in his Office, unless it be in a legal Course, though the Fact is true; no Man may say of a Justice of Peace to his Face, that he is unjust in his Office; no Man may come to a Judge, either by Word or Petition, You have given an unjust, or an ill Judgment, and I will not obey it, it is against the Rules and Law of the Kingdom, or the like; no Man may say of the great Men of the Nation, much less of the great Officers of the Kingdom, that they do act unreasonably or unjustly, or the like; least of all may any Man say any such thing of the King, for these matters tend to possess the People, that the Government is ill administred, and the Consequence of that is, to set them upon desiring a Reformation, and what that tends to, and will end in, we we have all had a sad and too dear bought Experience; the last Age will abundantly satisfy us, whither such a thing does tend: Men are to take their proper Remedies for Redress of any Grievances they lye under, and the Law has provided sufficiently for that: These things are so very well known to all Men of the Law, and indeed to all the People of *England* of any Understanding, that I need not, nor will not, stand any longer upon it, but come to the matter that is now before you Gentlemen, to be tryed. The Fact that we have laid, we must prove, rather to keep to the formality of a Tryal, than to pretend to inform you, or tell you what you do not know, it is all publickly notorious to the whole World; but because we must go on in the regular methods of Law, we shall
prove

prove the Facts in the Order they are laid in the Information. First, We take notice that his Majesty, of his great Clemency and Goodness to his People, and out of his desire that all his Subjects might live easily under him (of which I think never Prince gave greater or more plain Evidence of his Intentions that way) the fourth of *April*, One Thousand Six Hundred Eighty Seven, He did issue forth his Royal Declaration for Liberty of Conscience; this matter, without all question, was welcome to all his People that stood in need of it, and those that did not could not but say the thing in the nature of it was very Just and Gracious; but presently it must be surmised, that the King was not in earnest, and would not, or could not make good his Promise: But to take away all Surmises, his Majesty was pleased, by his Declaration of the twenty seventh of *April* last, not only to repeat his former Declaration, but likewise to renew his former Promises to his People, and to assure them that he still was, and yet is, of the same Opinion, that he had at first declared himself to be of; nay, we further shew you, that to the end that this thing might be known to all his People, even to the meanest Men, who it may be were not willing or able to buy the Declaration, and that the King himself might be under higher Obligations, if it were possible, than his own Word, he was desirous it should be repeated in the Churches, and read in that Sacred Place, that all his People might hear what he had promised, and given his own Sacred Word for; and he himself might be under that solemn Tye and Obligation to keep his Word, by remembering that his Promises had, by his own Command, been published in the time of Divine Service, in the House of God; and thereupon was the Order of Council made,

made, that has been likewise read to you, which does direct, that it should be read in all the Churches and Chappels in the Kingdom; and you have heard, and we shall prove, what a return his Majesty has had for this Grace and Kindness of his; you'll find, when we come to read that which they call a Petition, all their Thanks his Majesty had for his Favour and Goodness to his People, 'tis only hard Words, and a heavy Accusation, such as a private Person would be little able to bear. I will not aggravate the matter, but only say thus much, that his Majesty, who was always a Prince of as great Clemency as ever this Kingdom had, and who was represented, for all that, as a Prince of the greatest Cruelty before his Accession to the Crown, by his Enemies, is now accused by his Friends for this Effect of his Mercy. My Lord, and Gentlemen of the Jury, his Majesty resented this ill Usage so far, that he has ordered and thought fit to have a publick Vindication of his Honour in this matter, by this Tryal; and we shall go on to our Proofs, and we do not doubt but you will do his Majesty (as you do all other Persons) Right.

Mr. Soll. Gen. My Lord, we will go on to prove the Parts of this Information, and we will proceed according to the Method which *Mr. Attorney* has opened, and which is pursuant to the Order of the Facts laid in the Information. Give us the first Declaration under the Great Seal, the Declaration of the fourth of *April, 1687.*

[*The Declaration was delivered into the Court.*]

Mr. Soll. Gen. Read the Date of it first.

Clerk reads. Given at our Court at Whitehall, the fourth Day of April, 1687, and in the third Year of our Reign.

Mr.

118 *The Tryal of the Seven Bishops.*

Mr. Soll. Gen. Read the Title of it, Sir.

Clerk. It is Entituled, *His Majesties Gracious Declaration to all his Loving Subjects for Liberty of Conscience.*

Sir Rob. Sawyer. Is it under Seal? Is the Great Seal to it?

Mr. Soll. Gen. Give it down to Sir Robert Sawyer, that he may see it; for I would have every thing as clear as possible. — *Sir Robert Sawyer,* will you have it read?

Sir Rob. Sawyer. No, we would save as much of the time of the Court, as may be.

Mr. Soll. Gen. Then pray put in the Second Declaration of the twenty seventh of *April* last.

Clerk reads. *Given at our Court at Whitehall, the twenty seventh Day of April, 1688. in the Fourth Year of our Reign; and it is Entituled, His Majesties Gracious Declaration.*

Sir Rob. Sawyer. Is that under the Great Seal too?

Clerk. Yes, it is.

Mr. Soll. Gen. Deliver that down likewise, that they may see it.

Sir Rob. Sawyer. We are satisfied, you need not read it.

Mr. Soll. Gen. Then where is the Order of Council for the Reading of it?

Mr. At. Gen. Swear Sir John Nicholas. — There he is.

[*Sir John Nicholas Sworn.*]

L. C. Just. Come, Mr. Attorney, what do you ask Sir John Nicholas?

Mr. Soll. Gen. Hand the Order to Sir John Nicholas. — Is that the Order of Council, Sir John?

Sir

The Tryal of the Seven Bishops. 129

Sir John Nicholas. The Book, Sir, is not in my Custody ——— there is the Register that keeps it, he has it here to produce.

Mr. Soll. Gen. Swear *Mr. Gantlett.*

[*Mr. Gantlett sworn.*]

Mr. Soll. Gen. Is that the Council Book?

Mr. Gantlett. Yes, this is the Council Book:

Mr. Soll. Gen. Then turn to the Order of the fourth of May, the King's Order of Council, for the reading the Declaration.

Mr. Gantlett. There it is, Sir.

[*The Book deliver'd into Court.*]

Mr. Soll. Gen. Read it, I pray.

Clerk reads. *At the Court at Whitehall, the fourth of May, 1688.* ——— and so reads the Order of Council.

Mr. Soll. Gen. My Lord, we have one thing that is mentioned in the Information, that this Declaration was printed; if that be denied, we will call *Henry Hills*, his Majesties Printer, because we would prove all our Information as it is laid.

L. C. Just. You must do so, *Mr. Solicitor*, you must prove the whole Declaration.

Mr. Soll. Gen. Cryer, call *Henry Hills.*

[*He was called, but did not presently appear.*]

Mr. Soll. Gen. Call *Mr. Bridgeman* ——— though these Declarations prove themselves, we have them here Printed ——— but swear *Mr. Bridgeman.*

K

[*Mr.*

[*Mr. Bridgeman sworn.*]

Mr. Soll. Gen. Shew *Mr. Bridgeman* the two Declarations.

L. C. Just. What do you ask him?

Mr. Soll. Gen. We ask you, Sir, if the two Declarations were Printed.

Mr. Bridgeman. What Declarations do you mean, Mr. Sollicitor?

Mr. Soll. Gen. You know what Declarations I mean well enough, but we'll ask you particularly; you know the Declaration that was made the fourth of *April*, in the third Year of the King. — Was it printed?

Mr. Bridgeman. Yes, it was printed by the King's Order.

Mr. Soll. Gen. Was that of the twenty seventh of *April*, in the fourth Year of the King, printed?

Mr. Bridgeman. Yes, they were both printed by the King's Order.

Mr. Att. Gen. Then the next thing in course is the Bishops Paper.

Sir Rob. Sawyer. *Mr. Bridgeman*, pray let me ask you one Question; Did you ever compare the Print with that under Seal?

Mr. Bridgeman. I did not compare them, Sir *Robert Sawyer*.

Mr. Soll. Gen. He does swear they were printed by the King's Order.

Sir Rob. Sawyer. Good Mr. Sollicitor, give me leave to ask him a Question — Can you swear then that they are the same?

Mr. Bridgeman. I was not asked that Question, Sir.

Mr.

The Tryal of the Seven Bishops. 131

Mr. Soll. Gen. Come then, *Mr. Bridgeman*, I'll ask you. ——— Do you believe they are the same?

Sir Rob. Sawyer. Is that an Answer to my Question?

Mr. Soll. Gen. We must ask him Questions as well as you, *Sir Robert*. ——— What say you? Do you believe it to be the same?

L. C. Just. You hear *Mr. Solicitor's* Question, answer it *Mr. Bridgeman*.

Mr. Bridgeman. Yes my Lord, I do believe it.

L. C. Just. Well, that's enough.

Mr. Att. Gen. If there were occasion, we have them here compared, and they are the same.

Sir Rob. Sawyer. With Submission, my Lord, in all these Cases, if they will prove any Fact that is laid in an Information, they must prove it by those that know it of their own Knowledge. ——— Do you know it to be the same?

Mr. Soll. Gen. That's very well, Sir.

Sir Rob. Sawyer. Ay, so it is, *Mr. Solicitor*. It is a wonderful thing, my Lord, that we cannot be permitted to ask a Question. ——— Do you know it to be the same, *Mr. Bridgeman*, I ask you again?

Mr. Bridgeman. I have not compared them, I tell you, *Sir Robert Sawyer*.

Sir Rob. Sawyer. Then that is no Proof.

L. C. Just. Would you have a Man swear above his Belief? he tells you he believes it is the same.

Sir Rob. Sawyer. Is that proof of an Information?

L. C. Just. Well, you'll have your time to make your Objections by and by.

132 *The Tryal of the Seven Bishops.*

Mr. Att. Gen. Then swear *Sir John Nicholas*.

Sir John Nicholas. I am sworn already.

Mr. Att. Gen. I see you have a Paper in your Hand, *Sir John Nicholas*, pray who had you that Paper from?

Sir John Nicholas. I will give you an Account of it, as well as I can.

Mr. Pollexfen. Before they go to another thing, my Lord, we think they have failed in their Proof of their Information, about the printing this Declaration.

Mr. Att. Gen. Where is *Mr. Hills*?

Mr. Just. Allyb. They have laid, That it was printed by the King's Order; and it is such a matter, *Mr. Solicitor*, as you may clear, if you will, sure.

Mr. Soll. Gen. There is *Mr. Hills*, now I see him.

Lord Ch. Just. I was going to give Order that you should send to the Printing-house for him.

Mr. Just. Allyb. They may put this matter out of doubt too, if they will, on the other side; for I see they have a Copy in Print, and there's the Original, they may compare them if they please.

Mr. Soll. Gen. I am very glad to hear such a strong Objection.

Sir Rob. Sawyer. We would clear the way for you, *Mr. Solicitor*.

Mr. Sol. Gen. No, you put Straws in our way; we shall be able enough to clear it without your help. Swear *Mr. Hills* and young *Mr. Graham* here.

[*Hills and Graham sworn.*]

Mr.

The Tryal of the Seven Bishops. 133

Mr. Soll. Gen. Mr. *Graham*, did you compare any of these Printed Declarations with the Original?

Graham. Yes, I did compare some of them, and did make Amendments as I went along.

Mr. Soll. Gen. Shew one that you have compar'd with the Original.

Mr. Att. Gen. *Hills* is here himself, we'll ask him. Are you sworn, Sir?

Cryer. He is sworn.

Mr. Att. Gen. Pray were the King's Declarations for Liberty of Conscience printed both of them?

Hills. Ay, an't please you, Sir.

Mr. Att. Gen. You printed them, I think.

Hills. Yes, I did print them.

Sir Rob. Sawyer. Mr. *Hills*, you say they were printed: Upon your Oath, after they were printed, did you examine them with the Original under Seal?

Hills. They were examined before they were printed.

Sir Rob. Sawyer. Did you examine them?

Hills. I did not; here's one that did.

Mr. Soll. Gen. Who is that?

Hills. It is Mr. *Williams* here.

Mr. Soll. Gen. Swear him.

[*Williams sworn.*]

Mr. Soll. Gen. Do you hear, *Williams*? Do you know that the King's Declaration for Liberty of Conscience, two of them, one of the 4th of *April*, and the other of the 27th of *April*, were printed?

Williams. Yes, my Lord.

134 *The Tryal of the Seven Bishops.*

Mr. Soll. Gen. Did you examine them after they were printed, by the Copy they were printed by?

Williams. Yes, I did.

Mr. Soll. Gen. Where had you the Copy; who had you it from?

Williams. I had it from *Mr. Hills.*

Sir Rob. Sawyer. *Mr. Williams*, did you examine them with the Original under the Great Seal?

Williams. The First Declaration I did.

Sir Rob. Sawyer. The Second Declaration is the main.

Williams. The Second was compos'd by the First.

Sir Rob. Sawyer. Why, is there no more in the Second Declaration than there was in the First?

Williams. Yes, there is, Sir.

Sir Rob. Sawyer. Did you examine That with the Original under the Great Seal?

Williams. No, I did not.

Mr. Soll. Gen. Can any one tell who did examine it under the Great Seal?

Mr. Finch. Pray what did you examine it by, *Mr. Williams*?

Williams. By a Copy that I receiv'd from *Mr. Hills.*

Mr. Att. Gen. Then we will go on; and we desire *Sir John Nicholas* to give an account where he had that Paper that he has in his Hand.

Mr. Finch. My Lord, it does not appear that the Copy that was printed is the true Copy of the Declaration.

Mr. Att. Gen. He says he had it from *Mr. Hills.*

Mr.

Mr. Finch. Pray, *Mr. Hills*, what did you examine that Copy by, which you gave to *Mr. Williams*?

Hills. I had the Copy from *Mr. Bridgeman*.

Mr. Finch. Did you examine it with the Original under the Great Seal?

Hills. I did not examine it, I had it from *Mr. Bridgeman*.

Mr. Finch. What, was it under Seal?

Mr. Bridgeman. It was the Original signed by the King.

Mr. Finch. But I ask you, was it under Seal?

Mr. Bridgeman. Not under the Great Seal it was not, it was the very Declaration the King signed.

Sir Rob. Sawyer. But it ought to be compar'd with the Original, or it is no good Proof that it is the same.

Mr. Soll. Gen. *Sir Robert Sawyer*, you understand Collation better sure, you should be asham'd of such a weak Objection as this.

Williams. We never bring our Proof to the Great Seal.

Sir Rob. Sawyer. But if you will have it Proof at Law, you must have it compared with the Original.

Mr. Soll. Gen. Do you think there is any great stress to be laid upon that? we only say it was printed.

Sir Rob. Sawyer. But you have made it part of your Information, and therefore you must prove it.

L. C. Just. I think there's Proof enough of that; there need no such Nicety.

Mr. Pollexfen. Well, my Lord, we must submit; let them go on, we won't stand upon this.

136 *The Tryal of the Seven Bishops.*

Mr. Att. Gen. Then pray let me go on. Where had you that Paper, *Sir John Nicholas*?

Sir John Nicholas. I had this Paper from the King's Hand.

L. C. Just. Put it in.

Mr. Soll. Gen. Who had you it from, do you say?

Sir J. Nich. From the King.

Mr. Soll. Gen. About what time had you it from the King, *Sir*?

Sir J. Nich. I had it twice from the King.

Mr. Soll. Gen. When was the first time, *Sir*?

Sir J. Nich. The first time was in Council the eighth of this Month.

Mr. Soll. Gen. What became of it afterwards?

Sir J. Nich. The King had it from me the twelfth, and the thirteenth I had it from the King again.

Mr. Sol. Gen. Pray deliver it this way into the Court: We will now go on, and prove the Bishops Hands to it. This is the Paper upon which we bring this Information, Gentlemen; it is all the Hand-writing of my Lord Archbishop, and signed by him and the rest of the Bishops.

Mr. Att. Gen. I suppose my Lords the Bishops will not put us to prove it, they will own their Hands.

L. C. Just. Yes, *Mr. Attorney*, their Council will put you to prove it; I perceive your best way is to ask nothing of them.

Mr. Att. Gen. My Lord, we will desire nothing of them, we will go on to our Proofs. Call *Sir Thomas Exton*, *Sir Richard Raynes*, *Mr. Brooks*, *Mr. Recorder*, and *Mr. William Middleton*.

[*Sir*

[*Sir Thomas Exton appeared, and was sworn.*]

L. C. Just. What do you ask *Sir Thomas Exton*?

Mr. Att. Gen. Pray convey that Paper to *Sir Thomas Exton*.

Mr. Soll. Gen. Shew that Paper to *Sir Thomas Exton*. — *Sir Thomas*, I would ask you one Question: Do you know the Hand-writing of my Lord Archbishop of *Canterbury*?

Sir Tho. Exton. I'll give your Lordship what account I can.

Mr. Soll. Gen. Pray, Sir, answer my Question; Do you know his Hand-writing?

Sir Tho. Exton. I never saw him write five times in my Life.

Mr. Soll. Gen. But I ask you, upon your Oath, do you believe that to be his Hand-writing?

Sir Tho. Exton. I do believe this may be of his Hand-writing.

Mr. Soll. Gen. Do you believe all the Body of it to be of his Hand-writing, or only part of it?

Sir Tho. Exton. I must believe it to be so, for I have seen some of his Hand-writing, and this is very like it.

Mr. Soll. Gen. What say you to the Name? Do you believe it to be his Hand-writing?

Sir Tho. Exton. Yes, I do.

Mr. Soll. Gen. Do you know any of the rest of the Names that are upon that Paper?

Sir Tho. Exton. No, I do not.

L. C. Just. Do you for the Defendants ask *Sir Thomas Exton* any Question?

Sir Rob. Sawyer. No, my Lord.

Nr.

138 *The Tryal of the Seven Bishops.*

Mr. Att. Gen. Then call Sir *Richard Raynes*.

Sir Tho. Exton. My Lord, Sir *Richard Raynes* has been sick this Month, and has not been at the Commons.

Mr. Soll. Gen. We have no need of him. Call *Mr. Brooks*.

[*Mr. Brooks sworn.*]

Mr. Att. Gen. Pray shew *Mr. Brooks* that Paper.

Mr. Soll. Gen. *Mr. Brooks*, I ask you this Question, Do you know my Lord Archbishop's Hand-writing?

Mr. Brooks. Yes, my Lord.

Mr. Att. Gen. Pray look upon that Paper; do you take that to be my Lord Archbishop's Hand?

Mr. Brooks. Yes, my Lord, I do believe it to be my Lord Archbishop's Hand.

Mr. Att. Gen. What say you to the whole Body of the Paper?

Mr. Brooks. I do believe it to be his Hand?

Mr. Att. Gen. What do you say to his Name there?

Mr. Brooks. I do believe this Name is his Hand-writing.

Mr. Soll. Gen. Call *Mr. William Middleton*.

Mr. Att. Gen. Pray, *Mr. Brooks*, don't go away, but look upon the Names of the Bishop of *St. Asaph*, and my Lord of *Ely*.

Mr. Soll. Gen. Do you know my Lord Bishop of *St. Asaph*'s Hand-writing?

Mr. Brooks. I have seen my Lord Archbishop of *Canterbury* and the Bishop of *St. Asaph*'s Hand-writing, and I do believe this is his Hand.

Mr.

The Tryal of the Seven Bishops. 139

Mr. Soll. Gen. Look you upon the Name of my Lord of *Ely*; do you know his Hand-writing?

Mr. Brooks. My Lord, I am not so well acquainted with my Lord of *Ely's* Writing.

Mr. Soll. Gen. But have you seen his Writing?

Mr. Brooks. Yes, I have.

Mr. Sol. Gen. Is that his Writing, do you think?

Mr. Brooks. It is like it.

Mr. Soll. Gen. Do you believe it to be his Hand?

Mr. Brooks. Truly I do believe it.

Sir Geo. Treby. Did you ever see him write?

Mr. Brooks. No, Sir.

Mr. Soll. Gen. But he has seen his Writing.

Sir Geo. Treby. How do you know that it was his Hand-writing that you saw?

Mr. Brooks. Because he own'd it.

Lord Ch. Just. How do you know it, do you say?

Mr. Brooks. I know it, I say, because I have seen a Letter that he writ to another Person, which he afterwards own'd.

Lord Ch. Just. What did he own, *Mr. Brooks*?

Mr. Brooks. That he wrote a Letter to another Person, which I saw.

Sir George Treby. To whom, Sir?

Sir Robert Sawyer. Have you the Letter here, Sir?

Mr. Brooks. No, Sir; the Letter was writ to my Lord Bishop of *Oxford*.

Sir George Treby. Can you tell what was in that Letter?

Mr. Att. Gen. What is that to this Question? You ask him how he knows his Hand-writing;
and,

and, says he, I did not see him write, but I have seen a Letter of his to the Lord Bishop of Oxford.

L. Chief Just. And he does say, my Lord of Ely own'd it to be his Hand that is there.

Mr. Soll. Gen. No, my Lord, that's a Mistake, he own'd a Letter that he had writ to the Bishop of Oxford to be his Hand-writing, and by Comparifon of this with that (says he) I take this to be his Hand-writing.

Mr. Brooks: That is my Meaning, my Lord:

Mr. Soll. Gen. Pray speak out, and tell us what are the Reasons that make you say you believe this to be the Bishop of Ely's Writing?

Mr. Brooks. Because it resembles a Letter that I have by me of his Writing to the Bishop of Oxford.

Mr. Soll. Gen. And you say he own'd that Letter to be his?

Mr. Brooks. My Lord Bishop of Oxford did answer it, and I waited upon the Bishop of Ely with the Answer, and he did own it.

Sir Geo. Treby. How did he own it, Sir?

Mr. Brooks. I had some Communication with my Lord of Ely about the Substance of that Letter, and therefore I apprehended he own'd it.

Mr. Just. Powell. That's a strange Inference, Mr. Solicitor, to prove a Man's Hand.

Mr. Att. Gen. We have more Evidence; but let this go as far as it can.

Mr. Serj. Pemberton. Certainly, my Lord, you will never suffer such a Witness as this.

L. Chief. Just. Brother Pemberton, I suppose they can prove it otherwise, or else this is not Evidence.

Mr. Just. Powell. So they had need, for it is

The Tryal of the Seven Bishops. 141

a strange Inference of Mr. Sollicitor, that this is a Proof of my Lord of *Ely's* Hand-Writing.

Mr. Just. Holloway. The Bishop of *Oxon* was dead before any of this Matter came in Agitation.

Mr. Soll. Gen. My Lord, we will bring other Proofs. — Call Mr. *Chetwood*, and Mr. *Smith*.

[*Mr. Chetwood and Mr. Smith sworn.*]

Mr. Soll. Gen. Mr. *Chetwood*, we would know of you if you know my Lord Bishop of *Ely's* Hand-Writing.

Mr. Chetwood. I never saw him write.

Mr. Soll. Gen. That's not an Answer to my Question: Do you know his Hand-Writing?

Mr. Chetwood. I do not certainly know it?

Mr. Soll. Gen. Have you seen any of it?

Mr. Chetwood. I have seen my Lord of *Ely's* Writing, that has been said to be his.

L. Chief Just. But surely you had better take a Witness that has seen him write.

Mr. Just. Powell. I think 'tis hardly possible for a Man to prove his Hand, that has not seen him write.

L. Chief Just. I think 'tis better Proof, indeed, to bring some that has seen him write.

Mr. Chetwood. My Lord, 'tis a long time since I saw my Lord of *Ely's* Writing.

L. Chief Just. Pray bring some other Proof, if you have it.

Bp. of Peterburgh. My Lord, we are here as Criminals before your Lordship, and we are prosecuted with great Zeal: I beg your Lordship that you will not be of Council against us, to direct 'em what Evidence they shall give.

L. Chief

142 *The Tryal of the Seven Bishops.*

L. Chief Just. My Lord of *Peterburgh*, I hope I have not behaved my self any otherwise hitherto than as becomes me: I was saying this (and I think I said it for your Lordships Advantage) That this was not sufficient Proof; and I think, if your Lordship observed what I said, it was for you, and not against you.

Bp. of Peterburgh. It was to direct them against us, how they should give Evidence.

Mr. Serj. Pemberton. Pray, my Lord of *Peterburgh*, sit down, you'll have no Wrong done you.

Sir Rob. Sawyer. We that are of Council will take care of that; and pray, my Lord, will you please to pass it by.

L. Chief Just. We are not used to be so serv'd, and I will not be used so.

Mr. Soll. Gen. If your Lordship pleases to pass that by, for what your Lordship said was in Favour of my Lords the Bishops, but I see they do not take it so.

Mr. Att. Gen. Pray, Mr. *Chetwood*, do you look upon the Name of my Lord of *Ely*; do you believe that to be his Hand-Writing?

Mr. Chetwood. I do believe it is.

Sir Rob. Sawyer. That's very well, when he says he never saw him write.

Mr. Just. Powell. What is the Reason of that Belief of his, I would feign know?

Mr. Chetwood. I have formerly seen his Hand, I think it was his; but I never saw my Lord of *Ely* write his Hand.

Sir Rob. Sawyer. Then the Question is, Whether this be Evidence?

Mr. Finch. How do you know that that which you saw formerly was my Lord of *Ely's* Hand?

Mr.

Mr. Chetwood. I have no such Certainty, as positively to swear that that was his Hand.

Mr. Soll. Gen. We will go on to other Proofs; and if we want better Evidence at the End, we will argue with them.

Mr. Chetwood. I am not certain that what I saw was my Lord of *Ely's* Hand-Writing, because I never saw him write.

Mr. Soll. Gen. You do very well to shew your good Affection.

Mr. Att. Gen. *Mr. Smith*, I would ask you this Question, Do you know my Lord of *Ely's* Hand-Writing?

Mr. Smith. I have seen it often.

Mr. Att. Gen. Look upon the Name of my Lord of *Ely* in that Paper; Do you believe it to be my Lord's Hand-Writing, or no?

Mr. Smith. I did not see him write it, Sir; I cannot tell whether it is or no.

L. Chief Just. Did you ever see his Name?

Mr. Smith. Yes, but it was a great while ago, and here are but seven Letters, and I cannot judge by that: I was better acquainted with his Hand-writing heretofore.

Mr. Soll. Gen. Pray, Sir, answer me; Do you believe it to be his Writing, or do you not?

Mr. Smith. I believe it may, for I did not see him write it.

Mr. Soll. Gen. But my Question is, Do you believe it, or do you not?

Mr. Smith. I say, I was better acquainted with it heretofore than I am now.

Mr. Soll. Gen. But pray answer my Question: Do you believe that to be my Lord of *Ely's* Hand-writing, or do you not?

Mr. Smith. I believe it may, Sir.

Sir

144 *The Tryal of the seven Bishops.*

Sir Rob. Sawyer. Why do you believe it?

Mr. Smith. I have no other Reason to believe it, but because I have seen something like it.

Mr. Just. Powell. How long ago is it since you saw him write?

Mr. Smith. I have not seen him write, so as to take Notice of it, for some Years: I could better judge of it when he writ his Name *Turner*, than now it is *Ely*, because there was more Letters to judge by.

[*Mr. Middleton sworn.*]

L. Chief Just. Here's *Mr. Middleton*; What do you call him for?

Mr. Soll. Gen. To prove many of their Hands.

Mr. Att. Gen. Pray shew him that Paper.

Mr. Soll. Gen. First, *Mr. Middleton*, do you know my Lord Archbishop's Hand-writing?

Mr. Middleton. I have seen his Grace's Hand-writing.

Mr. Soll. Gen. Do you believe it to be his?

Mr. Middleton. It is very like it.

Mr. Soll. Gen. But do you believe it, or do you not?

Mr. Middleton. I do believe it.

Mr. Soll. Gen. Do you know my Lord Bishop of *St. Asaph*'s Hand-writing?

Mr. Middleton. I never saw it as I know of.

Mr. Soll. Gen. What do you say to my Lord of *Ely*? His Name is next.

Mr. Middleton. It is like his Lordship's Hand.

Mr. Soll. Gen. Do you believe it, or do you not?

Mr. Middleton. It is like it, that's all I can say.

Mr.

The Tryal of the Seven Bishops. 145

Mr. Soll. Gen. Cannot you tell whether you believe it, or not believe it?

Mr. Middleton. I do believe it is his Hand.

Mr. Soll. Gen. Did you ever see him write? for I would clear this Matter beyond Exception.

Mr. Middleton. I have seen his Lordship write, but I never stood by him so near as to see him make his Letters.

Mr. Soll. Gen. Is that his Hand-writing?

Mr. Middleton. It is like it, I believe it is his.

Mr. Soll. Gen. You did not guide his Hand I believe — Do you know my Lord of *Chichester's* Hand-writing?

Mr. Middleton. Sir, I am acquainted with none of their Hands but with my Lord of *Canterbury's*, and my Lord of *Ely's*.

Mr. Soll. Gen. Do you know my Lord of *Peterborough's* Hand-writing?

Mr. Middleton. I had my Lord of *Peterborough's* Writing two Years ago for some Money, but I cannot say this is his.

Mr. Soll. Gen. Do you believe it to be his?

Mr. Middleton. I never took Notice of it so much, as to say, I believe it to be like it, I never saw it but once.

Mr. Soll. Gen. Do you know any other of the Names there? What say you to the Bishop of *Bristol's* Name?

Mr. Middleton. I saw once my Lord of *Bristol's* Hand-writing.

Mr. Soll. Gen. What say you to that Writing there?

Mr. Middleton. It is like it.

Mr. Soll. Gen. Do you believe it to be his or no?

L

Mr.

146 *The Tryal of the Seven Bishops.*

Mr. Middleton. Truly, that I cannot say, for I never saw it but once.

L. Chief Just. You never saw him Write, did you?

Mr. Middleton. No, my Lord, I never did.

Mr. Soll. Gen. Then we will call *Sir Thomas Pinfold*, and *Mr. Clavel*. — *Sir Thomas Pinfold* is there, swear him:

[*Sir Thomas Pinfold Sworn.*]

Mr. Soll. Gen. *Sir Thomas Pinfold*, do you know my Lord Bishop of *Peterborough's* Hand-writing?

Sir Tho. Pinfold. Truly, not very well, I never saw but one Letter from him in my Life; shew me his Hand, and I will tell you —
Which was done.

Mr. Soll. Gen. Well Sir, what say you to it?

Sir Tho. Pinfold. Then upon my Oath I say, I cannot well tell upon my own Knowledge that it is Hand.

Mr. Soll. Gen. I ask you, do you believe it to be his Hand?

Sir Tho. Pinfold. Sir, upon the Oath that I have taken I will answer you, that upon this Account, that I have heard there was a Paper delivered by my Lords the Bishops to the King, and this Paper that you offer me, I suppose to be the same, upon that Score I do believe it, but upon any other Score I cannot tell what to say.

Mr. Soll. Gen. I ask you upon your Oath, Sir, do you believe it is his Hand-writing or no?

Sir Tho. Pinfold. Sir, I have answered you already, that upon my own Knowledge I cannot say it is his Hand-writing; but because I have heard of such a Paper, I do believe it may be his.

L. Chief

L. Chief Just. Did you ever see my Lord Bishop write?

Sir Tho. Pinfold. I have been in his Chamber several times when he has been Writing, but I had more Manners than to look upon what he writ.

L. Chief Just. Did you never see him write his Name?

Sir Tho. Pinfold. I do not know that I ever saw him write his Name, but I have seen him Writing I say, and so my Lord Bishop may have seen me Writing; but I believe he does not know my Hand.

Mr. Sol. Gen. You have seen him write you say.

Sir Tho. Pinfold. I tell you, Mr. Solicitor, I have been in his Chamber when he has been writing, but I had more Manners than to look over him.

Mr. Just. Powell. Then you did never see any of that Writing

Sir Tho. Pinfold. I cannot say I did, my Lord.

Mr. Att. Gen. Pray did you never see any of his Writing but that Letter you speak of?

Sir Tho. Pinfold. No, not that I remember.

Mr. Just. Powell. Mr. Solicitor, you must call other Witnesses, for this does not prove any thing.

Mr. Att. Gen. We will go on—Swear Mr. Clavel.

[*Mr. Clavel Sworn.*]

Mr. Soll. Gen. Do you know my Lord Bishop of Peterborough's Hand-writing or no?

Mr. Clavel. I have seen it many times.

148 *The Tryal of the Seven Bishops.*

Mr. Soll. Gen. Do you know it when you see it?

Mr. Clavel. I believe I do, Sir.

Mr. Soll. Gen. Pray look upon that Paper, and upon your Oath tell us, do you believe that Name to be his Writing, or no?

Mr. Clavel. I do believe it is, my Lord.

Mr. Att. Gen. Pray look upon the rest of the Hands there, do you know any of the other Names?

Mr. Clavel. No, I do not.

Mr. Att. Gen. Have you ever seen any of their Writing?

Mr. Clavel. It is probable I may have seen some, but do not now remember it.

Mr. Soll. Gen. I think you are a Bookseller, *Mr. Clavel.*

Mr. Clavel. Yes, I am so, Sir.

Mr. Soll. Gen. I suppose you have had some Dealings with them in the Way of your Trade. Did you never see any of their Writing?

Mr. Clavel. I have seen the Names of some of them, but it is so long since that I cannot remember.

L. Chief Just. Did you ever see my Lord of *Peterborough* write?

Mr. Clavel. I cannot tell whether ever I saw him Write his Name or no; but I have had several Letters from my Lord of *Peterborough*.

Mr. Soll. Gen. Is that his Hand-writing?

Mr. Clavel. I cannot say it is, I believe it is.

Mr. Soll. Gen. You have had Letters from him you say?

Mr. Clavel. Yes, and it seems to be like his Hand.

Mr.

The Tryal of the Seven Bishops. 149

Mr. Pollexfen. But you never saw him write his Hand, you say?

Mr. Clavel. I cannot say I ever did.

Mr. Soll. Gen. Those Letters that you have received from my Lord of *Peterborough*, did he own them? Do you think they were Counterfeit, or of his own Hand-writing?

Mr. Clavel. I suppose he has own'd them, Sir.

Mr. Just. Powell. But you must Answer directly, Sir, Did he own them?

Mr. Soll. Gen. What did those Letters concern? Were they about Books, or what?

Mr. Clavel. They were sometimes about one Business, sometimes about another.

Mr. Soll. Gen. Was the Subject-matter of any of those Letters about Money; and was it paid you? Did you receive, or did you give any Account of it?

Mr. Clavel. They were about several Businesses.

L. Chief Just. Look you, *Mr. Clavel*, you must give us as particular Account as you can.

Mr. Soll. Gen. Pray, Sir, upon those Letters were the Things done that those Letters required?

Mr. Clavel. Yes, they were.

Mr. Soll. Gen. Did you do your part?

Mr. Clavel. Yes, I did.

Mr. Soll. Gen. Now I would ask you, Do you believe that Name of my Lord Bishop of *Peterborough* to be the Hand-writing of my Lord Bishop?

Mr. Clavell. I believe it is.

Mr. Just. Powell. Do you know that those Letters that you say you received from my Lord,

150 *The Tryal of the Seven Bishops.*

were of my Lord's own Hand-writing, Do you swear that?

Mr. Clavel. My Lord, I cannot swear that.

Mr. Finch. Do you know whether the Letters that you received, as you say, were written by my Lord himself, or by his Secretary?

Mr. Clavel. I have received Letters from him and his Secretary too.

Sir G. Treby. But were you present with him when he writ any Letters with his own Hand?

Mr. Soll. Gen. You do not mean a Letter to your self sure, Sir George?

Sir G. Treby. No Sir, I say any Letters.

Mr. Clavel. I have been present with my Lord often, but I cannot say I have seen my Lord write.

L. Chief Just. He has here told you, he has had several Letters of my Lord's own Hand, and from his Secretary too.

Mr. Just. Powell. He has said it, but you see he says he never saw him write.

Mr. Soll. Gen. We have given Evidence against my Lord Arch-Bishop, Lord Bishop of *Ely*, *St. Asaph*, *Peterborough*, and *Bristol*.

Mr. Just. Powell. Certainly *Mr. Solicitor* you mistake — But go on —

Mr. Soll. Gen. We have given Evidence I say against them, Sir, but whether it be sufficient Evidence, we shall Argue by and by — Call *Mr. Hooper* and *Mr. Chetwood* again.

[*Mr. Chetwood* appeared.]

Mr. Soll. Gen. Do you know the Hand-writing of my Lord Bishop of *Bath* and *Wells*?

Mr.

The Tryal of the Seven Bishops. 151

Mr. Chetwood. I have seen it twice or thrice, but it is a considerable time since I did see it.

Mr. Soll. Gen. Do you believe that is his Hand-writing?

Mr. Chetwood. I never saw him write his Name in my Life.

Mr. Soll. Gen. Pray look upon the Name, and tell us what you believe of it?

Mr. Chetwood. I believe it may, but I do not certainly know it to be his Hand, I rather believe it is my Lord Bishop of *Bath* and *Wells* his Hand, than I believe that other to be my Lord of *Peterborough's*.

Sir G. Treby. Do you believe that to be my Lord of *Peterborough's* Hand or no?

Mr. Chetwood. I say, I rather believe that this is the Bishop of *Bath* and *Wells* his Writing, than that which is above it or below it, to be their Writing; but truly I do not distinctly know my Lord Bishop of *Bath* and *Wells* his Hand.

Mr. Soll. Gen. Call *Mr. Hooper*.

L. Chief Just. You are very lame in this Matter.

Mr. Soll. Gen. The Witnesses are unwilling, and we must find out the Truth as well as we can.

[*Mr. Hooper* did not appear.]

Mr. Soll. Gen. Call *Mr. James* and *Mr. Powell*.

[*Mr. James* appeared and was sworn]

Mr. Soll. Gen. Do you know my Lord Bishop of *Bristol's* Writing, *Mr. James*?

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152 *The Tryal of the Seven Bishops.*

Mr. James. Yes, I believe I do, but I am not so certain, because my Lord writes several times several Hands.

Mr. Soll. Gen. Shew him the Paper: Is that my Lord of *Bristol's* Hand?

Mr. James I cannot say it is or no.

Mr. Soll. Gen. What do you believe?

Mr. James. It looks like his Hand; and that's all I can say.

Mr. Soll. Gen. But pray hearken, and answer to what I ask you; you are prepared for one Question it may be, and I shall ask you another: Upon your Oath, do you believe it to be the Hand-writing of my Lord of *Bristol*?

Mr. James. Upon my Oath, I can only say it looks like it, that's all.

L. Chief Just. Did you ever see him write?

Mr. James. Yes, my Lord, I have seen his Hand-writing several times, and it is like his Hand-writing, that is all I can say.

Mr. Soll. Gen. Sir, remember you are upon your Oath, and answer my Question.

Mr. James. Upon my Oath, I know no more than that, Sir *William Williams*.

Mr. Soll. Gen. I ask you, Sir, whether you believe it to be his Hand or not?

Mr. James. My Lord, it looks like his Hand, and it may be his Hand.

Mr. Att. Gen. But you do think and believe one way or other: What do you believe?

Mr. James. It may be his Hand, for what I know, and it may not.

Mr. Soll. Gen. It may be your Hand.

Mr. James. No, Sir, it cannot be mine, I am sure.

Mr.

The Tryal of the Seven Bishops. 153

Mr. Soll. Gen. What do you believe?

Mr. James. I believe it may be his Hand, or it may not be his Hand, that is all I can say.

L. C. Just. Come, Sir, you must answer fairly, Do you believe it to be his Hand, or do you not?

Mr. James. Yes, I do believe it.

Mr. Att. Gen. You are very hard to believe methinks.

Mr. James. No, I am not.

Mr. Soll. Gen. You do very well now *Mr. James*; when you do well, we'll commend you.

Mr. Att. Gen. Call *Mr. Nathaniel Powell*.

[*Mr. Powell was sworn.*]

Mr. Soll. Gen. Pray, Sir, let's know what's your Name?

Mr. Powell. My Name is *Nathaniel Powell*.

Mr. Soll. Gen. Pray do you know the Hand-writing of my Lord Bishop of *Chichester*?

Mr. Powell. I have not seen the Paper, Sir.

Mr. Soll. Gen. Do you know his Hand-writing?

Mr. Powell. Yes, I believe I do.

Mr. Soll. Gen. Look upon that Name of his.

Mr. Powell. I did not see my Lord write that.

Mr. Soll. Gen. Who says you did? No body asks that of you; how you answer! Pray Sir, remember your Oath, and answer seriously, Do you believe it to be his Writing or no?

Mr. Powell. I believe it is like my Lord's Hand-writing, but I did never see him write it.

Mr. Soll. Gen. No body says you did.

Mr. Powell. Therefore I cannot swear positively it is his Hand.

Mr.

154 *The Tryal of the Seven Bishops.*

Mr. Soll. Gen. We do not ask that neither.

Mr. Powell. I cannot tell whether it be his Hand or no.

L. C. Just. Sir, you must answer the Question directly, and seriously: Do you believe it, or do you not believe it?

Mr. Powell. I cannot tell what to believe in the case.

Mr. Soll. Gen. Then I ask you another Question; upon your Oath, Do you believe it is not his Hand?

Mr. Powell. I cannot say that neither.

Mr. Soll. Gen. Once again I ask you, upon your Oath, Do you believe it to be his Hand? I ask you plainly, and let Mankind judge of you.

Mr. Powell. I tell you, Sir, I cannot tell what to believe.

Mr. Soll. Gen. My Lord, if these things be endured, there will be an end of all Testimony, if Witnesses do not answer fairly to the Questions that are asked them.

Mr. J. Powell. Truly to me, for a Man to swear his Belief in such a matter, is an extraordinary thing.

Mr. Soll. Gen. He is obliged to answer Questions, when they are fairly put to him.

Mr. Pollexfen. I think that is a hard Question, not to be answered.

Mr. Soll. Gen. Make your Exceptions to the Evidence if you please.

L. C. Just. First, he says, He knows his Hand; then he says, He has seen him write; and then he says, He did not see him write this; but he shuffles, he won't answer whether he believes it or not.

Mr.

The Tryal of the Seven Bishops. 155

Mr. Pollexfen. The Question is, Whether Belief in any case be Evidence?

Mr. Soll. Gen. If they have a mind to a Bill of Exceptions upon that point, let them seal their Bill, and we'll argue it with them when they will; in the mean time, we'll go on, and that which we now pray, my Lord, is, that this Paper may be read.

Mr. Att. Gen. We have given sufficient Evidence sure to have it read, therefore we desire it may be read.

Mr. Serj. Levinz. My Lord, before this Paper be read, we hope you will let us be heard to it: We think that what they desire (to have this Paper read) ought not to be; for what is all the Proof that they have given of this Paper? they have a Proof by Comparison of Hands, which in a Criminal Case ought not to be received: And besides, my Lord, what is that Comparison of Hands that they have offered? Some Persons come here and say, They cannot tell whether it be their Hands, they believe it may or it may not, for ought they know; How shall we convict any man upon such a Testimony as this? Can we have our Remedy against him for Perjury, for saying, He believes it to be our Hand? therefore here is not any Evidence to charge us. For first, It is only a Comparison of Hands: And secondly, That Comparison is proved in such an uncertain manner: Some of them tell you, They do not know what to believe; another tells you, I believe 'tis rather such a Lord's Hand; than the others are such a Lord's Hands, I believe 'tis rather his Hand than that above it, or that below it; what sort of Proof is all this? Therefore we pray it may not be read till they prove it better.

Mr.

156 *The Tryal of the seven Bishops.*

Mr Serj Pemberton. Pray, my Lord, spare me a Word or two in this matter for Evidence sake, there is a great deal of reason we should take Exceptions to the Evidence that has been given; for truly I think I never heard such a sort of Evidence given before: It is a Case of as great Concernment as ever was in *Westminster-Hall*; and for them to come to prove Hands only by those that saw Letters, but never saw the Persons write; this I hope will not amount to so much as a Comparison of Hands. Your Lordship knows, that in every petty Cause, where it depends upon the Comparison of Hands, they use to bring some of the Parties Hand-writing, which may be sworn to, to be the Parties own Hand, and then it is to be compared in Court with what is endeavoured to be proved, and upon comparing them together in Court, the Jury may look upon it, and see if it be right; and never was there any such a thing as this admitted in any poor petty Cause, that is but of the value of Forty Shillings. And therefore as to this Evidence, first, We say Comparison of Hands ought not to be given at all in the Cases of Criminals; and I believe it was never heard of that it should. In the next place, if it be admitted to be Evidence, yet it is not such an Evidence, as that by Comparison of Hands the Jury can take notice of it; for in such manner of Proofs by Comparison of Hands, the usage is, That the Witness is first asked, concerning the Writing he produces, Did you see this writ by the Defendant, whose Hand they would prove? If he answers yes, I did, then should the Jury upon Comparison of what the Witness swears to, with the Paper that is to be proved, judge whether those Hands be
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so like as to induce them to believe, that the same Person writ both; and not that the Witness should say, I had a Letter from such a Person, and this is like the Hand of that Letter, therefore I believe it to be his Hand: my Lord, I hope this shall never be admitted for Evidence in this Court.

L.C. Just. I do take it, that the Witness himself is judge of the Comparison; for if he does know the Parties Hand, and a Paper be offer'd him to prove the Parties Hand, he is to compare it in his own mind.

Mr. Serj. Pemberton. It never was admitted to be so, that I know of, my Lord, or ever read of.

Mr. Soll. Gen. You may remember several Cases about that, particularly *Sidney's Case*.

Mr. Pollexfen. Pray, my Lord, hear me a little as to that: it is a Point of very great moment, whether in the case of a Misdemeanour, either in an Indictment or Information, it be good Evidence to offer Comparison of Hands; and that this Court did adjudge quite contrary upon an Indictment of Forgery against my Lady Carr, appears in *Syderfin's Reports*; they went to prove her Letters written by her to Cox, the Court rejected it, and gave their Judgment here, That it was no Evidence; and that for this Reason, Because of the evil Consequences of it. For, said they, it is an easie matter for any Man's Hand to be counterfeited; that they sure will agree, for frequent daily Experience shews how easily that may be done: Is it not easie then to cut any Man down in the World, by proving it is like his Hand? and proving that Likeness by comparing it with something that he hath formerly seen?

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158 *The Tryal of the Seven Bishops.*

This strikes mighty deep; the honestest Man in the World and the most Innocent may be destroyed, and yet no fault to be found in the Jury or in the Judges; if the Law were so, it would be an unreasonable Law. Next, my Lord, for the Case of *Sidney*, that was a case of Treason. Now in the case of Treason there is always other Evidence brought; and this Evidence comes in, but as a collateral Evidence, to strengthen the other; but in this case it is the single Evidence, for ought that appears, for there is nothing more (for ought I can see) in the case, but whether this were their Hands, and proved only by what another believes: Now shall any be condemned by another's Belief without Proof? Surely, my Lord, that was never Evidence yet to convict any one; so that their Proof fails in both Points: For first, it ought to be considered whether Comparison of Hands be Evidence in a case of Misdemeanour; And next, if it be Evidence, whether you will take it, that the Belief of a Man that brings nothing to compare with it, or never saw the Party write, but has received Letters, and says, This is like it, and therefore he believes it to be his Hand, be good Evidence as a Comparison of Hands.

Mr. Serj. Pemberton. My Lord, they are pleased to mention —

Mr. Soll. Gen. Mr. Serj. you have been heard already, and you are not to reply upon us; or if you would, we must be heard first.

Mr. Serj. Pemberton. I would only speak to that Case of *Sidney*; my Lord, that Case differs from this *toto Cælo*, the Writing was found in his possession, in his Study; there was the Proof that nailed him.

Mr.

The Tryal of the Seven Bishops. 159

Mr. Soll. Gen. You shall see how we'll apply it by and by.

Mr. Att. Gen. Pray, my Lord, favour me a Word in this matter: That there is stronger and weaker Evidence no Man doubts; but that which these Gentlemen say, that in this Case there is no Evidence, must needs be a mistake: If they mean, that it is not so strong an Evidence as is possible to be given, I agree with them, it is not: For if we had brought three or four Men that had seen them write this very Paper, and put their Names to it, that had been a stronger Evidence than this that we have given; but whether we do not give such a sort of Evidence as may induce the Jury to believe, that this is their Paper, and their Hands to it, we submit: They say, This is such a method as never was taken; but I admire that that should be said by Men of their Experience and Knowledge in the Law; for is there any thing more usual, or any other course taken for the Proof of Hands, than for a Witness to say, He knows the Hand of the Party very well, for he has often seen his Hand-writing, or received Letters from him? And if you shew him the thing that you would prove to be his Hand, and he says, I do believe this to be his Hand, for this Reason, Because I have had other things of his Writing: Certainly in the Experience of any Man that has practised, this is an Evidence that is given every Day, and allowed for Evidence. For the Case of Mr. *Sidney*, which your Lordship has heard mentioned, it is certainly very opposite to this purpose; it is insisted upon and pretended, That that was Evidence, because it was found in his Study: But without all doubt, that would not be the reason; for
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may not a Book of another Man's Writing be found in my Study? And he insisted upon it in his own Defence; but the Answer was, That it should be left as the Question, Whether the Jury would believe it upon the Evidence that was given, of its being his own Hand-writing: And so in this case, though it be not so strong Evidence, as if we had brought those that had seen them write it; yet Evidence it is, and whether it be sufficient to satisfy the Jury, may be a Question; but no question, it is good Evidence in Law.

Mr. Soll. Gen. It is a wonderful thing, they say, That such Evidence should be offered; but truly, my Lord, it is a much stranger thing to hear *Mr. Serj. Pemberton* say, It was never done before; and then to make that Remark to your Lordship upon the case of *Sidney*, which I'll put to your Lordship and the Court as a Case, and let him contradict me if he can; and then we shall see how far it goes. *Sidney* was indicted for High Treason; and the Treason insisted upon was, a Writing supposed to be his, it being found in his Study; the Question was, Whether it was his Hand-writing or no? There was no positive Evidence that it was his Hand-writing; there was no Evidence produced that proved it to be his Hand-writing; for there was no one that swore, That they saw him write it; there was nothing proved, but the similitude of Hands. Ay, but says *Mr. Serj. Pemberton*, It was found in his Study: will *Mr. Serj. Pemberton* be content, that all the Libels that are found in his Study, shall, for that reason, be adjudged to be Libels, to be his Hand-writing, and he to be a Libeller for them? I think he will make a few
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vere Declamation against that, and he would have very good reason for it: Certainly that which was Evidence in one Man's Case, will be Evidence in another. God forbid there should be any such Distinction in Law; and therefore I conclude that this is good Evidence.

Mr. Serj. Pemberton. The Court went upon this, That it was found in his Study, and compared with Letters and Bills of Exchange produced in Court; which were sworn to be of his Hand-writing.

Mr. Soll. Gen. My Lord, I was by all the time; for I was ordered to attend him in the *Tower*; and therefore I can tell what passed as well as any body. My Lord, they proved no more as to that Libel, but only by Comparison of Hands; they had no other Proof in that Case, but by comparing the Hand-writing; and that was insisted upon to be a mighty fallible thing: That which they would have for us to compare, Paper with Paper, it is true, would make the Proof somewhat stronger, if we could, in such a Case as this, be able to produce such Evidence: but I appeal to your Lordship, and shall leave it to the Jury, to consider which is better Evidence; these Men, that have been produced, that have been conversant with these Lords, and acquainted with their Hand-writing, and who (as your Lordship sees) are not willing Men to give Evidence, they avoid it as much as they can; and they swear it all to be the Hand-writing of the Archbishop of *Canterbury*, as they believe; which is as far as any Man can swear. One says the whole Body of the Paper is my Lord of *Canterbury's* Hand, and he knows it very well; so that we are not upon a single Name, but a whole Paper that contains

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162 *The Tryal of the Seven Bishops.*

many Lines; and this is as much as can be proved by any one, that did not see the thing written. Then, my Lord, for the rest of the Company, the Evidence is not so strong against every one of them, as it is against my Lord Archbishop; but is strong enough certainly to convict them of what we accuse them of. And pray, my Lord, what was the Objection in *Sidney's Case*, but what has been mentioned here? That any Man's Hand might be counterfeited. I remember in that Case, there was one Mr. *Wharton*, a young Gentleman, then in the Court, that undertook to the Court, that he would counterfeit that Hand presently; and he that was to swear the Comparison, should not know which was the one, and which was the other; which certainly was a stronger Case than this. And I see some of the Learned Gentlemen that are now standing at the Bar, who pressed this matter very hard against Mr. *Sidney*, and Mr. *Sidney* lost his Life upon that Comparison of Hands; tho' Mr. *Wharton* did testify how easie a Matter it was to have a Man's Hand counterfeited; and we all know was a Man of Value and Quality; so there is a Precedent for Mr. *Serjeant Pemberton*, that never heard of this Law before. They say the proving of Similitude of Hands is no Evidence, unless you prove the actual Writing; what a condition then will *England* be in, when Witnesses are dead? Is it not the most common Practice that can be, to produce Witnesses to prove such Men are dead, whose Names are set as Witnesses to Deeds; and they swear, they believe it to be the Hand-writing of those Witnesses? Can there be any greater Evidence of such a Case, unless it be the Confession of the Party himself? My Lord, we are now only upon reading

The Tryal of the Seven Bishops. 163

ing this Paper. We have been heard, and they have been heard; now we pray the Paper may be read.

Mr. Recorder. We pray it may be read.

Mr. Serj. Levinz. If your Lordship please —

Mr. Soll. Gen. We are not to be replied upon, *Mr. Serjeant.*

L. C. Just. You have spoke, Brother *Levinz*, and you have spoke, Brother *Pemberton*, and I would willingly hear you what you have to say; but we must not have vying and revying, for then we shall have no end.

Mr. Serj. Levinz. I would offer your Lordship some new Matter which has not been touched upon yet, why it is not to be read.

L. C. Just. What's that, Brother?

Mr. Serj. Levinz. All the Proof that has been given, whatsoever it amounts to, has been only of its being Written, but no Proof has been given of its being written in the County of *Middlesex*, where the Information is laid, and the matter is Local.

Mr. Soll. Gen. First read it, and then make your Objection.

Mr. Recorder. My Lord, as to the Evidence that has been given, I would only put your Lordship in mind of one Case, and that was the Case of *Sir Samuel Barnardiston*; and the great Evidence there, was the proof of its being his Hand-writing, and that being proved, was sufficient to convict him of a Libel; for they could not believe *Sir Samuel Barnardiston* was Guilty of making Libels, unless they were proved to be his Hand-writing.

Sir Rob. Sawyer. He owned them to be his Hand-writing.

L. C. Just. If you do expect my Opinion in it, whether this be good Evidence, and whether

164 *The Tryal of the Seven Bishops;*

this Paper be proved or no; I am ready to give it.

Mr. Finch. My Lord, I desire to be heard before the Opinion of the Court be given.

Mr. Soll. Gen. If there be not Proof enough to induce the Jury to believe this is their Paper; yet sure there is enough to read it.

Sir Rob. Sawyer. My Lord, we have not been heard to this yet.

Mr. Soll. Gen. Why, is this fit to be suffered?

L. C. Just. *Mr. Solicitor*, I am always willing to hear *Mr. Finch*.

Mr. Soll. Gen. But I hope your Lordship and the Court are not to be complimented into an unusual thing.

Mr. Serj. Pemberton. It is not a Compliment, but Right and Justice.

Mr. Soll. Gen. Certainly it is Right and Justice that there should be some Limits put to Mens speaking, that we may know when to have an end.

Sir Rob. Sawyer. *Mr. Solicitor* does mistake the Right, my Lord, for we desire to be heard to this Point; as not having spoke to it yet.

Mr. Soll. Gen. Pray, Sir, let me make my Objection to your being heard; for I believe you and I have been chid several times, for speaking over and over the same thing.

Sir R. Sawyer. This that we now offer, is not to the same Point, that we have spoken to already.

Mr. Soll. Gen. We are now speaking to the Reading of the Paper, and you have spoken to it already.

Sir R. Sawyer. If the Court will please to hear us, we have that to offer against the Reading of that Paper, which has not been offered yet.

L. C.

The Tryal of the Seven Bishops. 163

L. C. Just. Sir *Rob. Sawyer*, I take it, it is in the Breast of the Court to hear when they will, and as much as they will, and whom they will; for if Three or Four have been heard of a side to speak what they will, the Court may very well depend upon the Learning of those Three or Four, that they say what can be said upon the Point, and that's enough; but if Six or Seven desire to be heard over and over to the same thing, certainly the Court may stop at Three or Four, if they will.

Sir R. Sawyer. This is a new Objection that none of us have been heard to yet.

Mr. Finch. My Lord, that which I offer is not contrary to the Rules of Law, nor contrary to the Practice of the Court; nor was I going any way to invade that Privilege which *Mr. Solicitor* claims of making Objections, and not receiving an Answer.

Mr. Soll. Gen. What a fine Declamation you have now made! I never claimed any such Right; but I oppose your being heard over and over to the same thing.

Mr. Att. Gen. Pray, my Lord, let's come to some Issue in this matter.

L. C. Just. I will hear you; but I would not have you introduce it with a Reflection upon the King's Council.

Mr. Soll. Gen. My Lord, if you impose that upon him, you stop his Mouth; for some Men cannot speak without Reflection.

L. C. Just. On the other side, pray *Mr. Solicitor*, give us leave to hear fairly what they have to say; for, I perceive, he cannot offer to speak, but you presently stop his Mouth.

Mr. Finch. My Lord, that which I was going to say, is another matter than any thing that

166 *The Tryal of the Seven Bishops.*

has been yet offered: We say, that this Paper ought not to be read; for that they are obliged by Law to prove their Information; and consequently, having laid a particular place where the thing was done, in the Information, they ought to prove that this was done in that place. The Evidence that they have given, is of my Lords the Bishops writing this Paper; and they have laid it to be done in *Middlesex*: And this, with Submission to your Lordship, is local; and they must prove it to be written in *Middlesex*, where they have laid it, or else they fail in their Proof. This is another Objection, which as yet hath not been spoken to: That if there be a Proof of their Hand-writing, yet there is no Proof where that Hand was written; and therefore they are not yet got so far, as to have it read against my Lords.

Mr. Att. Gen. For that point, my Lord, we say, This would have been as properly said after the Paper had been read, when they come to make Objections against our Proof, by way of Defence: And, with Submission, it had been more proper then, than it is now: For what are we now doing? My Lord, we are proving that such a Paper was subscribed by my Lords the Bishops; and Sir *John Nicholas* gives you an account, that he had it from his Majesty at the Council: And that certainly is in the County of *Middlesex*; and it will concern you to prove that it was written elsewhere.

Mr. Serj. Pemberton. That's very well *Mr. Attorney*; sure you do not think as you speak.

Mr. Att. Gen. Here is a Paper composed and written by you, that Sir *John Nicholas* says he had from his Majesty: How he came by it, I suppose you will tell us by and by: This is your Hand.

The Tryal of the Seven Bishops. 167

Hand-writing, that I think we have proved sufficiently; this is found in the County of *Middlesex*: And you come and tell us, that we must prove that it was written in the County of *Middlesex*; and it is taken to be written where it was found, unless you prove the contrary.

Mr. Ser. Pemberton. That's pretty Doctrine indeed, and very new.

Mr. Soll. Gen. My Lord, here's an Objection made too timely: We are now upon reading of this Paper; and the Question is, Whether it shall be read, or not be read? Surely we have given Evidence enough to induce the Court to read it: And it is another Question, that will come time enough afterwards, Where it was written?

L. C. Just. Truly, I do not think it was proper for you to stand upon the place where it was written as yet.

Mr. Serj. Levinz. When we are upon an Information of a Fact in *Middlesex*, will you hear them give Evidence of a Fact in *Yorkshire*?

Mr. Soll. Gen. We are not to be driven by these Gentlemen; we are to be directed by the Court.

L. C. Just. I think truly it is yet too early to make this Objection.

Mr. Serj. Pemberton. Surely, my Lord, this is our time to oppose the reading of it, as not proved.

Mr. J. Powell. Mr. Solicitor, I think you have not sufficiently proved this Paper to be subscribed by my Lords the Bishops.

Mr. Soll. Gen. Not to read it, Sir?

Mr. J. Powell. No, not to read it, it is too slender a Proof for such a Case: I grant you, in Civil Actions a slender Proof is sufficient, to make out a Man's Hand, by a Letter to a Tradesman,

168 *The Tryal of the Seven Bishops.*

or a Correspondent, or the like; but in Criminal Causes (such as this) if such a Proof be allowed, where is the Safety of your Life or any Man's Life here?

Mr. Soll. Gen. We tell you a Case where it was allowed; and that is Mr. *Sidney's* Case; a Case of Treason, and printed by Authority: We tell you nothing, but what was done t'other Day.

L. C. Just. I tell you what I say to it; I think truly there is Proof enough to have it read: And I am not ashamed nor afraid to say it; for I know I speak with the Law: Say what you will of Criminal Cases, and the Danger of Peoples Lives; there were more Danger to the Government, if such Proof were not allowed to be good.

Mr. J. Powell. I think there is no Danger to the Government at all, in requiring good Proof against Offenders.

L. C. Just. Here's my Lord Archbishop and the Bishop of *St. Asaph*, and my Lord of *Ely*, their Hands are proved; it is proved to be my Lord Archbishop's Writing by Mr. *Brookes*, and he proves my Lord of *Ely's* Hand by Comparison, and so my Lord of *St. Asaph's*. Now Brother *Pemberton*, there's an Answer to your Objection; it being proved that it is all my Lord Archbishop's Hand: Then they come and say, We'll prove the Hands of the others by Comparison: And for that they bring you Witnesses, that say, They have received Letters from them, and seen their Hand-writing several times; and comparing what they have seen with this very Paper, says the Witness, I do believe it to be his Hand. Can there be a greater Evidence or a fuller?

Mr. Serj. Pemberton. Admit it be a full Evidence

dence against my Lord Archbishop, What's that to the rest? There's no Evidence against them.

Mr. J. Allybone. Brother *Pemberton*, as to the Objection you make of comparing of Hands; it is an Objection indeed, I do agree; but then consider the Inconvenience which you and *Mr. Pollexfen* do so much insist upon: If a Man should be accused by Comparison of Hands, Where is he? He is in a lamentable case; for his Hand may be so counterfeited, that he himself may not be able to distinguish it. But then you do not consider where you are on the other side: That may be an Objection in matters of Fact, that will have very little weight, if compared and set all together. For, on the other side, where shall the Government be, if I will make Libels, and traduce the Government with Prudence and Discretion, and all the Secrecy imaginable? I'll write my Libel by my self, prove it as you can; that's a fatal Blot to the Government; and therefore the Case is not the same; nor is your Doctrine to pass for current here, because every Case depends upon its own Fact. If I take upon me to swear I know your Hand, the Inducements are to my self, how I came to know it, so as to swear it: Knowledge depends on Circumstances; I swear that I know you, but yet I may be under a Mistake, for I can have my Knowledge of you no other way but from the Visibility of you, and another Man may be so like you, that there is a possibility of my being mistaken; but certainly, that is Evidence, and good Evidence: Now here are several Gentlemen that swear as to my Lord Archbishop's Hand-writing; I do agree, as to some of the others, that the Evidence is not so strong; for what that Man said, that he did believe it was rather such a Lord's Hand,

170 *The Tryal of the Seven Bishops.*

Hand, than that which went before, or that which came after, it is of no weight at all, and so some of the others; but it is positively proved against my Lord Archbishop, and one or two more; so that that's enough to induce the reading of this Writing.

Mr. Just. Holloway. Good my Lord, let me give my Opinion.

L. C. Just. Ay, with all my Heart, Brother.

Mr. Just. Holloway. My Lord, I think as this Case is, there ought to be a more strong Proof, for certainly the Proof ought to be stronger and more certain in Criminal Matters than in Civil Matters; in Civil Matters, we do go upon slight Proof, such as the Comparison of Hands, for proving a Deed, or a Witnesses Name, and a very small Proof will induce us to read it; but in Criminal Matters we ought to be more strict, and require positive and substantial Proof, that is fitting for us to have in such a case; and without better Proof, I think it ought not to be read.

L. C. Just. You must go on to some other Proof. *Mr. Solicitor,* for the Court is divided in their Opinions about this Proof.

Mr. Soll. Gen. Then, my Lord, we will come to the Confessions of my Lords the Bishops, and I hope that will be believed by all Mankind.

Mr. Att. Gen. Truly, my Lord, we did forbear that Evidence, and would not have proceeded this way, if we had had fair Play on the other side.

Sir Rob. Sawyer. Mr. Attorney, give us leave to defend our Clients all the Ways we can; I think we do nothing but what is fair; the Court you see is divided, therefore we did not without reason insist upon it.

L. C.

The Tryal of the Seven Bishops. 171

L. C. Just. You must go on as you can, for they will put you upon it.

Mr. Att. Gen. Swear *Mr. Blathwayt*.

[*Mr. Blathwayt sworn.*]

Mr. Soll. Gen. Pray hand the Writing to him.

[*The Writing shown to him.*]

Mr. Soll. Gen. Have you seen that Writing formerly, Sir?

Mr. Blathwayt. Yes, Sir.

Mr. Soll. Gen. What did you hear my Lord Archbishop say about that Paper?

Mr. Att. Gen. And the rest of my Lords the Bishops?

Mr. Soll. Gen. First we'll ask as to my Lord Archbishop; Did he own it to be his Hand-writing?

Mr. Blathwayt. My Lord, I believe this to be the Paper that my Lord Archbishop did own to be subscribed by him.

Mr. Soll. Gen. When was it owned by him?

Mr. Blathwayt. On the Council Day, the eighth of this Month.

Mr. Soll. Gen. Where was it owned? because we would obviate that Objection of the County?

Mr. Blathwayt. It was at the Council Table at *Whitehall*.

Mr. Soll. Gen. What say you to the Bishop of *St. Asaph*? Did he own it?

Mr. Blathwayt. Yes; all my Lords the Bishops did own it.

Mr. Soll. Gen. Name them particularly; what say you of the Bishop of *Ely*?

Mr. Blathwayt. In the same manner, my Lord.

Mr. Soll. Gen. The Bishop of *Chichester*?

Mr.

172 *The Tryal of the seven Bishops.*

Mr. Blathwayt. In the same manner.

Mr. Soll. Gen. The Bishop of *Bath and Wells*?

Mr. Blathwayt. Yes, my Lord.

Mr. Soll. Gen. The Bishop of *Peterborough*?

Mr. Blathwayt. Yes, my Lord.

Mr. Soll. Gen. And the Bishop of *Bristol*?

Mr. Blathwayt. Yes, my Lord.

Mr. Soll. Gen. So; we have proved they all owned it.

Mr. Just. Holloway. Could not this have been done at first, and saved all this Trouble?

Sir Rob. Sawyer. Have you done with *Mr. Blathwayt*, *Mr. Attorney*, that we may ask him some Questions?

Mr. Att. Gen. Ask him what you will.

Mr. Serj. Pemb. Pray, *Mr. Blathwayt*, upon what Occasion did they own it; you are sworn to tell the whole Truth; pray tell all your Knowledge, and the whole Confession that they made.

Mr. Blathwayt. My Lord, I am called here by a *Subpœna* to answer on behalf of the King; my Lord, I am ready to do my Duty, and I beg of your Lordship that you would please to tell me what is my Duty; for whatsoever I shall answer I shall speak the Truth in.

Mr. Serj. Pemb. There is nothing desired, but that you would speak the Truth.

Mr. Blathwayt. My Lord, I am easily guided by your Lordship what I ought to answer to.

L. Chief Just. What is it you ask him, Brother *Pemberton*?

Mr. Serj. Pemb. We desire *Mr. Blathwayt* to tell the whole Discourse that passed at the Council, when he says my Lords the Bishops owned this Paper.

Mr. Soll. Gen. That's a very pretty thing indeed:

L. Chief

The Tryal of the Seven Bishops. 173

L. Chief Just. Look you, Mr. *Blathwayt*, you must answer them what they ask you, unless it be an ensnaring Question, and that the Court will take Care of.

Mr. Blathwayt. If your Lordship please to ask me any Question, I shall readily answer it.

L. Chief Just. You must answer them.

Mr. Serj. Pemb. We ask you upon what Occasion they came to own their Hands? What Discourse was made to them, and what they answered?

Mr. Blathwayt. My Lord, I beg your Lordship's Directions.

L. Chief Just. Come, tell it, Sir.

Mr. Blathwayt. My Lord, the Occasion was this; This Paper was read in Council, and I had the Honour to read it before the King, and it having been read before his Grace the Arch-Bishop, and my Lords the Bishops, they were asked whether they did own that Paper, and, my Lord, they did own it.

Sir Rob. Sawyer. Mr. *Blathwait*, was that the first time that my Lords the Bishops came in?

Mr. Blathwayt. Sir I was not asked that Question.

L. Chief Just. What would you have, Sir Robert Sawyer?

Sir Rob. Sawyer. We would have an Account what passed at the Council.

L. Chief Just. Would you have all the Discourse betwixt the Council and my Lords the Bishops?

Mr. Serj. Pemb. All that relates to their Accusation, my Lord, their whole Confession, and what was said to them.

Mr. Att. Gen. Do you think, Mr. Serjeant, that
when

when we call a Witness, you are at Liberty to examine him to every impertinent thing?

Mr. Soll. Gen. My Lord, we desire that they may only ask reasonable and proper Questions.

Mr. Serj. Pemb. Mr. Solicitor he is sworn to answer and tell the whole Truth, and that's all we ask of him.

Sir Rob. Sawyer. Sir, I will ask you a plain Question upon your Oath, did not my Lord Arch-Bishop, and the rest of my Lords the Bishops, at first refuse to own it, or to answer whether it were their Hands or not?

Mr. Soll. Gen. That is not a fair Question, Sir Robert Sawyer; 'tis a leading Question.

Mr. Serj. Pemb. Then I ask you in short, what did they refuse? I am sure that is a fair Question, for God forbid that any should hinder the King's Evidence from telling Truth.

Sir Rob. Sawyer. And God forbid that half Evidence should condemn any Man.

L. Chief Just. God forbid the Truth should be concealed any way.

Mr. Serj. Pemb. Pray, Sir, when they were first asked, whether that was their Hands or not, what Answer did they give?

Mr. Blathwayt. Sir, I have begged the Favour of my Lords the Judges to tell me what I am to answer, and what Questions are proper for me to answer to.

L. Chief Just. You must answer any Questions that are not ensnaring Questions.

Sir Rob. Sawyer. Mr. Blathwayt, you are upon your Oath to testify the Truth.

Mr. Blathwayt. Sir, I am not acquainted with the Methods of Law, I desire my Lords the Judges would Instruct me.

Mr.

The Tryal of the Seven Bishops. 175

Mr. Just. Allybone. Answer to the Question that they ask you.

L. Chief Just. We observe what they ask you; we'll take Care that they ask you nothing but what they should.

Mr. Blathwayt. I desire the Question may be repeated.

Mr. Serj. Pemb. When they were first asked if it were their Hands, what Answer did they give the King?

Mr. Blathwayt. His Grace the Archbishop, and my Lords the Bishops, at first did not immediately answer whether the Paper were theirs or no.

Mr. Serj. Pemb. What did they say?

Mr. Blathwayt. They said they did humbly hope, if they were put to answer, no Advantage should be taken against them.

Mr. Serj. Pemb. What did they say farther at that time concerning his Majesty's Pleasure?

Mr. Soll. Gen. That's a leading Question, *Mr. Serj. Pemberton*, you cannot leave your way of leading Witnesses.

Mr. Serj. Pemb. It is a very strange thing; if we ask a Question that's general, that's excepted to; if we ask any Question in particular, then they find fault with us, that it is a leading Question; so that we can never ask a Question that will please them. Pray *Mr. Blathwayt*, what did they say concerning the King's Pleasure, whether they would answer if the King commanded them?

Mr. Serj. Trinder. How can it be material what they said?

L. Chief Just. It is material that it should be asked, and that it should be answered.

Mr. Serj. Levinz. You are to tell the whole Truth, Sir; pray tell us what did my Lords the Bishops say about submitting to the King's Pleasure?

Mr.

176 *The Tryal of the Seven Bishops.*

Mr. Soll: Gen. What is that to the Purpose?

Mr. Pollexfen. Mr. Sollicitor, his Oath is to tell the Truth, and the whole Truth, and therefore he must answer my Question.

Mr. Serj. Pemb. You are mighty loth, Mr. Sollicitor, to let us hear the Truth; I would not willingly lead him in any thing, and I cannot see that this is any leading Question, unless his Oath be against Law, which says he is to tell the whole Truth:

Mr. Att. Gen. My Lord, I do beg your Lordship's Favour of a Word in this thing: It is certain, if they ask any thing that shall take off the Evidence that was first given, that it is not true, I cannot oppose it; but if they ask Questions only to inflame, and to possess People with foolish Notions, and strange Conceits, that is not to the Fact that we are now trying——

Sir Rob. Sawyer. 'Tis only to have the Truth out that we do it.

Mr. Serj. Pemb. There is no Body here that will be inflamed, Mr. Attorney: I have asked a fair Question, the Court has ruled it so.

Mr. Blathwayt. I shall readily answer any Question that the Court thinks fit.

Mr. Serj. Pemb. Sir, by the Oath you have taken you are to tell the whole Truth.

L. Chief Just. Is he to tell you all that was done at the Council-Board that Day?

Mr. Serj. Pemb. No, my Lord; only what passed there about my Lords the Bishops Confession, the whole of that Matter:

Mr. Blathwayt. There has been so much said between the asking of the Question and this time, that I desire it may be repeated, that I may know what to answer to.

Mr. Serj. Pemb. I ask you in short, Sir, what did

The Tryal of the Seven Bishops. 177

did my Lords the Bishops say at the time of their appearing in Council concerning the King's Pleasure, whether they should answer or not?

Mr. Blathwayt. The first time my Lords the Bishops came into the Council, they were asked the Question whether they did own that Paper; they did immediately answer, They humbly hoped, as they stood there Criminals, His Majesty would not take Advantage against them, but however they would obey His Majesty's Command.

Sir Rob. Sawyer. Were they commanded to withdraw?

Mr. Blathwayt. Yes, thereupon they were commanded to withdraw, which they did.

Mr. Serj. Pemb. When they came in again what Questions were asked them?

Mr. Blathwayt. They came in several times, more than twice, I have Reason to remark this, that they did so; Do you mean the second time, Sir?

Mr. Serj. Pemb. Yes, Sir.

Mr. Blathwayt. The second time they seemed unwilling to own the Paper.

Sir Rob. Sawyer. And what did they do the third time?

Mr. Serj. Pemb. But first let us know what more was done the second time.

Sir Geo. Treby. How was that Unwillingness of theirs overcome?

Mr. Serj. Pemb. When they express their unwillingness what did they say farther?

Mr. Blathwayt. If I remember right, they said as they did the first time, they humbly hoped His Majesty would not take Advantage against them.

N

Mr.

178 *The Tryal of the Seven Bishops.*

Mr. Serj. Pemb. Then what did they say the third time?

Sir Rob. Sawyer. Pray, were they asked whether they published it?

Mr. Blathwayt. As to the publishing it, it was laid before them, and I think they were asked the Question whether they published it.

Sir Rob. Sawyer. And what answer did they make?

Mr. Blathwayt. I remember His Grace, and my Lords the Bishops, did not own they had published it, but they denied it.

Sir Geo. Treby. After they discover'd their Unwillingness the second time, what follow'd next?

Mr. Blathwayt. They did withdraw after the second Attendance.

Mr. Serj. Levinz. But what was said to them? Was that all that was said to them the second time?

Mr. Blathwayt. I have said two things already, that they were unwilling to answer, and that they denied the publishing.

L. Chief Just. This is strange Usage of a Witness, to put him to tell every thing that was said.

Mr. Serj. Pemb. I would ask you this Question, Sir, When they came in the second time, whether they did desire to know if it were His Majesty's Command that they should own it?

L. Chief Just. That I must not permit you to ask, Brother, that is to lead the Witness.

Mr. Serj. Pemb. My Lord, he will not answer general Questions; I have asked him all along general Questions, and I cannot get an answer from him to them.

Mr. Blathwayt. I am ready to answer any Questions that the Court thinks I should answer; I am not backward to answer according to my Duty.

L. Chief

The Tryal of the Seven Bishops. 179

L. Chief Just. Let one of you ask a Question at a time, and not chop in one upon another.

Mr. Soll. Gen. In all the Tryals that ever I have been in, in all the Cases of Criminals, the King's Witnesses used to be treated with Respect, and not to be fallen upon in this manner.

L. Chief Just. He shall be sure to have all Respect paid him.

Mr. Soll. Gen. He is in Office under the King.

Mr. Serj. Pemb. I do not think Mr. Blathwayt does believe I would shew him any Disrespect, more than he would shew me.

Mr. Att. Gen. I beg one Word, my Lord.

L. Chief Just. Mr. Attorney, What do you say?

Mr. Att. Gen. My Lord, I say I do oppose the asking of this Question, not but that every Man has a right to cross examine a Witness, but if they ask such a Question, let them tell us what use they would make of it.

L. Chief Just. Mr. Attorney-General, for that Matter—

Mr. Serj. Pemb. My Lord, if you please I'll give Mr. Attorney an Answer.

L. Chief Just. Brother Pemberton, I was speaking to Mr. Attorney, and pray hear me, I will not ask you what use you'll make of the Question you ask, but do you ask fair and regular Questions, and I'll take Care you shall have an Answer to them.

Mr. Serj. Pemberton. I will deal plainly with the Court, and tell you what use we intend to make of our Question; if they answered under a Promise from his Majesty, that it should not be given in Evidence against them, I hope they shall not take advantage of it.

180 *The Tryal of the Seven Bishops.*

Mr. Soll. Gen. I say that is a very unmannerly Question, but however it shall be answered.

Mr. Serj. Pemberton. Why so, Mr Solicitor?

Mr. Soll. Gen. My Lord, it is to put something upon the King which I dare hardly name.

L. C. Just. We do not know what Answer will be made to it yet, but it does look like an odd kind of Question.

Mr. Soll. Gen. If Men will be so pressing, I, for the King, desire the Question may be entred.

Sir Rob. Sawyer. What do you mean, Mr. Solicitor?

Mr. Soll. Gen. I know very well what I mean, Sir; I desire the Question may be recorded in Court.

Mr. Serj. Pemberton. Record what you will, I am not afraid of you, Mr. Solicitor.

Mr. Soll. Gen. Are you afraid of the Law?

Mr. Serj. Pemberton. No, nor of you neither.

L. C. Just. Pray be quiet, Gentlemen.

Mr. Att. Gen. Pray, Mr. *Blathwayt*, answer whether there was any Promise made to my Lords the Bishops from the King.

Mr. Blathwayt. My Lord, I take the Question to be, Whether the King was pleased to make my Lords the Bishops any Promise of not taking advantage of what Answer they made?

Mr. Att. Gen. That is the Question.

Mr. Blathwayt. As that Question is stated, there was no such made.

L. C. Just. Look you, he tells you there was no such Promise made; there is an Answer to your Question, Brother.

Mr. Serj. Levinz. We made no such Question; but the Question I would ask is this, —

Mr.

The Tryal of the Seven Bishops. 181

Mr. Soll. Gen. For the Satisfaction of the Court repeat what you said just now, *Mr. Blathwayt*.

Mr. Blathwayt. I take the Question to be, Whether the King made any Promise to my Lords the Bishops, that no advantage should be taken of what they said? and I say the King made no such Promise.

Mr. Serj. Pemberton. We did not ask you the Question, but we only told you what use we would have made of another Question.

Mr. Pollexfen. *Mr. Blathwayt*, I see you can very well distinguish what Questions are to be answered; I ask you in short upon your Oath, When they were first called in, what was said to them, and what was answered by them?

L. C. Just. Here has been a great deal of Wrangling, but this is a fair Question, and may reduce us to order again; tell us over again from the beginning what passed when my Noble Lords the Bishops came in the first, second, and third time, when they were examined about this Paper.

Mr. Blathwayt. My Lord, I shall comply with your Lordship's Directions, I apprehend I am to answer together concerning the first, second, and third comings in of my Lords the Bishops into the Council. The first time, (as I said before) my Lords the Bishops were unwilling to own the Paper, and did say they humbly hoped his Majesty would not take advantage against them, but that they were ready to obey his Command. The second time they were called in they did repeat it again, that they hoped his Majesty would not take advantage against them; after that there was mention made of the Paper being published, I remember my Lords the Bishops said they had not published it. —

Sir

190 *The Tryal of the Seven Bishops.*

Sir Rob. Sawyer. Is that all?

Mr. Att. Gen. You have no mind to hear all, I think.

L. C. Just. How do you expect to be answered your Questions, if you interrupt them? Go on, *Mr. Blathwayt.*

Mr. Blathwayt. Sir, I said last, that they having prayed the King that no advantage might be taken against them for what they should say, there was mention made of the Paper's being published, and my Lords the Bishops did say they had not published it; and his Grace my Lord Archbishop said it was written with his own Hand, and that he had not made use of his Clerk.

Sir Sob. Sawyer. Is that all you can remember that passed at that time?

Mr. Blathwayt. This is the Substance of what I remember.

L. C. Just. Was this the third time?

Mr. Blathwayt. No; that was the second time, my Lord.

Mr. Pollexfen. If there be not some Order in this Evidence, my Lord, we shall not be able to observe any thing upon it. — Pray what was done afterwards?

Mr. Blathwayt. My Lord Chancellor, upon their coming in, did require them to answer whether they did own that Paper or not; my Lords the Bishops did own the Paper.

Mr. Pollexfen. Do you remember in what Words or Expressions (as near as you can) they did own it?

Mr. Soll. Gen. Is this a practice to be endured?

Mr. Finch. Why, he may apprehend and take that to be an owning of it which was not.

Mr.

The Tryal of the Seven Bishops. 191

Mr. Soll. Gen. Has not he sworn the manner of it, and almost the very Words?

Mr. Serj. Levinz. We desire nothing of him but that he will tell us what Words they said when they owned it.

Mr. Blathwayt. It was the third time that they came in, that they owned it.

Mr. Serj. Pemberton. Why, what did they say?

Mr. Blathwayt. My Lord Chancellor required them to answer, whether they owned the Paper or no.

Mr. Serj. Pemberton. What did they say then?

Mr. Blathwayt. As near as I can remember, his Grace and my Lords the Bishops did own the Paper.

Mr. Serj. Pemberton. What Words did they own it in? Tell the manner of it.

Mr. Soll. Gen. What's this to the purpose?

Mr. Finch. *Mr. Blathwayt,* Did you take Notes of what passed there?

Mr. Blathwayt. I answer, Sir, I did not take Notes, for I attended the King at his Elbow, and did not take Notes; *Mr. Finch,* you know the manner of the Council in such cases very well.

Mr. Att. Gen. Then we ask you for the King, because they shall not enflame People by such an Expression, In what Words they did own it, if you can remember?

Mr. Blathwayt. Sir, I have declared my Memory as well as I can; when the other Clerks come to be examined, if they can tell any more, let them.

Mr. Soll. Gen. But we will have no Discourse to enflame the World; Did the King promise or declare that no advantage should be taken of their Confession?

L. C.

192 *The Tryal of the Seven Bishops.*

L. C. Just. I would ask him that Question, What was the manner that my Lord Chancellor express'd himself in to them, when they came in the third time?

Mr. Blathwayt. As soon as my Lord Chancellor had required them to declare whether they owned that Paper, as well as I remember, his Grace took the Paper in his Hand, and it was handed over, or shewed, to my Lords the Bishops, and they owned and declared so, just as if they should lay it before the Court, just so: [*Holding it forth to the Court.*] I do not recollect my self of all the Circumstances that passed, I only can tell you the Substance.

Mr. Soll. Gen. He does not remember what they said particularly.

Mr. Att. Gen. Mr. Solicitor, I know well enough what they mean by the Question; I know they would fain possess the World with a Belief that there was such a Promise made them, and yet they are prosecuted notwithstanding that Promise; therefore I do ask you, *Mr. Blathwayt*, and for the King's Honour I must ask it, Did the King make any Promise or Declaration, that no advantage should be taken, or use made of it?

Mr. Blathwayt. The King did not make any Promise or Declaration that no advantage should be taken, or use made of it.

A r. Soll. Gen. He only put them upon it, whether they did own it or not.

Mr. Att. Gen. I ask you upon your Oath, Did my Lord Archbishop own it to be his Hand-writing?

Mr. Blathwayt. Yes, he did, and said he writ it with his own Hand, and would not let his Clerk write it.

Mr. Att.

Mr. *Att. Gen.* Did he own the whole to be his Hand-writing, or not?

Mr. *Blathwayt.* Yes, he did.

Mr. *Att. Gen.* Did every one of the Bishops own their Names subscribed to it?

Mr. *Blathwayt.* Yes.

Mr. *Soll. Gen.* Then, my Lord, we pray now that it may be read.

L. C. *Just.* I suppose now they will be content it should be read.

Mr. *Finch.* If your Lordship please to favour me one Word, I think it cannot yet be read; and my Objection is this: —

L. C. *Just.* I thought you had made all your Objections before, as to the reading of it.

Mr. *Finch.* Pray, my Lord, spare us: Here are two Parts of this Information; the one is for consulting and conspiring to diminish the King's Royal Prerogative, and for that end they did make and write a seditious Libel; the other Part is, that they did publish this seditious Libel. We are hitherto upon the first Part, the making and writing of it; both Parts are local; untill they have proved the making and writing of it to have been in *Middlesex*, it is not Evidence upon this Information.

Mr. *Sol. Gen.* We have proved it written and publish'd in *Middlesex*.

Mr. *Serj. Pemb.* The contrivance and writing of a Libel is in itself penal, and they may be punish'd for it, if they be found guilty: Now, if they could give an undeniable Evidence concerning the publishing of it, that is nothing to this point; but if they should not give such Evidence, or any Evidence at all of the publication, yet if it be prov'd that it was written and contriv'd by them, they would be guilty for so much, if it be a Libel; and this we say is local as well as all the rest; and there-

fore we insist upon it, that the writing and contriving must as well be proved to be in *Middlesex*, as the publication, for all is local.

L. C. Just. There is no publishing yet proved.

Mr. Serj. Levinz. It is true, my Lord, here is nothing of a Publication yet, (with your Lordship's favour) for their Answer to His Majesty in Council was, that they did not publish it; all that is said yet, is, that they own'd the Paper to be their hands. My Lord, does the owning of that own that it was written in the County of *Middlesex*? or, that it was contrived or made there? No surely, upon this Evidence the Place is clearly at large: My Lord, this might have been done in the County of *Surrey*, or *Somerset*, or any other County: Their Information is, That they did consult and contrive to diminish the King's Prerogative at *Westminster* in the County of *Middlesex*; and there they did write and cause to be written this Libel, and there they did publish it. Suppose it should be granted that it is proved that this is the Archbishop's Hand-writing, and these are their Names to it, is there any one Evidence that any thing of this was done in *Middlesex*? and, my Lord, that is the thing they are to prove.

Mr. Sommers. If your Lordship please, all matters of Crime are so local, that if it be not proved to be done in the County where it is laid, the Party accused is as innocent, as if he never had done the thing; and, with submission, it is the very point of the Information; that it be proved they are guilty of the Fact in the place where it is laid to be done.

L. C. Just. This is the same thing over and over again; but I am content to hear you, *Mr. Sommers*, at any time; I have told you my opinion about reading of the Paper already, if you'll have it again you may.

Mr. Pol-

Mr. *Pollixfen*. Pray, good my Lord, spare us, before it be read.

Mr. *Just. Holloway*. Mr. *Pollixfen*, you have not yet had the Directions of the Court for the reading of it.

Mr. *Att. Gen.* My Lord, when this Paper is read, which we pray it may be, we will answer their Objections, but at present we say, they are out of time.

Mr. *Pollixfen*. Good Lord, what a strange thing is this! We object against the reading of it, and you'll answer us after it is read.

Mr. *Soll. Gen.* Certainly, my Lord, we have done enough to prove that this is a Paper owned by them in the County of *Middlesex*, and we pray it may be read.

L. *Ch. Just.* Truly I am of the same mind I was before, that it is too soon to make the Objection, and that the Paper ought to be read.

Mr. *Soll. Gen.* We submit to your Rule.

Mr. *Pollixfen*. If it be the Will of the Court, I have nothing to say.

Mr. *Just. Powell*. My Lord, the Contrivance and Publication are both matters of Fact, and upon Issue joined the Jurors are Judges of the Fact, as it is laid in the Information; but how can they be Judges of a matter of Fact done in another County? and it must be presum'd, in favour of Innocence, not to be done in this County, but in another, except they prove it.

Mr. *Att. Gen.* We are not yet ripe for arguing that point.

Mr. *Soll. Gen.* We are speaking only to the Court now for the reading of this Paper, and the Jury are not Judges of that, whether the Paper ought to be read or no, that is meerly a matter of Law, and under the Direction of the Court; and therefore I pray, since it is now in your Lordship's Judgment,

whether that Paper should be read, that you would please to order it to be read.

L. Ch. Just. I can only give you my own opinion, let my Brothers give theirs.

Mr. Just. Holloway. There is no-body against the reading of it, my Lord ; I suppose my Brother *Powell* is not against its being read.

Mr. Just. Powell. But they say the King's Council must make it out first, that the writing of it, and the conspiring about it was in the County of *Midds*, or there can be no judgment, so much as to read it.

Mr. Pollixfen. My Lord, if the Objection be saved to us, we shall not so much oppose the reading it, only we would not be surprized in point of time.

Mr. Just. Powell. Nay, if they consent to the reading, we have no reason to hinder it.

L. Ch. Just. Brother, I believe they know well enough what they have to say for their Clients ; let the Paper be read.

[Clerk reads]

The Humble Petition of William Archbishop of Canterbury—

Sir R. Samyer. Read the whole Petition: Pray my Lord that the whole may be read. Read the Top first, Sir ; to whom it was directed.

L. C. Just. Read the whole.

[Clerk reads]

To

To the King's Most Excellent Majesty.

The Humble Petition of William Archbishop of Canterbury, and of divers of the Suffragan Bishops of that Province, now present with him, in behalf of themselves and others of their absent Brethren, and of the Clergy of their respective Dioceses,

Humbly sheweth :

THAT the great averfness they find in themselves to the distributing and publishing in all their Churches your Majesty's late Declaration for Liberty of Conscience, proceedeth neither from any want of Duty and Obedience to Your Majesty, (our Holy Mother, the Church of *England*, being both in her Principles and in her constant Practice unquestionably Loyal; and having (to her great Honour) been more than once publicly acknowledged to be so by Your Gracious Majesty) nor yet from any want of due tenderness to Dissenters, in relation to whom they are willing to come to such a Temper as shall be thought fit when that matter shall be considered and settled in Parliament and Convocation; but, amongst many other Considerations, from this especially, because that Declaration is founded upon such a Dispensing Power, as hath been often declared illegal in Parliament, and particularly in the Years 1662, and 1672, and in the beginning of Your Majesty's Reign; and is a matter of so great moment and consequence to the whole Nation, both in Church and State, that Your Petitioners cannot in Prudence, Honour, or Conscience, so far make themselves Parties to it, as the Distribution of it all over the Nation, and the solemn Publication of it once and again, even in GOD's House, and in the

time of His Divine Service, must amount to, in common and reasonable Construction.

Your Petitioners therefore most humbly and earnestly beseech Your Majesty, that You will be graciously pleased not to insist upon their Distributing and Reading your Majesty's said Declaration :

And Your Petitioners (as in Duty bound) shall ever pray, &c.

Mr. *Att. Gen.* My Lord, we shall leave our Evidence here, and hear what they can object to it.

Mr. *Finch.* Have you no farther Evidence, Mr. *Attorney* ?

Mr. *Att. Gen.* We leave it here for the present.

Mr. *Sol. Gen.* The Gentlemen of the Jury desire to see the Petition.

L. *Ch. Just.* Shew it them.

(*The Petition was shewn to the Jury.*)

Mr. *Finch.* But will you give no farther Evidence, Mr. *Attorney* ?

Mr. *Att. Gen.* I tell you we'll leave it here, till we see what you say to it.

Mr. *Finch.* There is nothing that we should say any thing to.

Mr. *Att. Gen.* Make your Advantage of it ; if it be nothing, we can have nothing.

L. *Ch. Just.* What say you for the Defendants, Gentlemen ?

Mr. *Finch.* My Lord, in short, we say that hitherto they have totally failed, for they have not proved any Fact done by us in *Middlesex*, nor have they proved any Publication at all.

Sir

Sir Robert Sawyer. They have given no Evidence of any thing.

L. Ch. Just. Pray Gentlemen speak One at once, and then we shall understand the better what we hear.

Sir R. Sawyer. My Lord, We say, they have given no Evidence of the Conspiring, Writing, or Publishing in *Middlesex*; Nay, as to the Publication, there is none at all proved.

Mr. Finch. Here is no Proof of any Publication, nor of the writing or making in *Middlesex*; so that there is no Proof at all against my Lords the Bishops.

L. Ch. Just. You heard what Mr. Blathwayt said, they owned it in *Middlesex*.

Mr. Finch. That is not a Publication sure, or any Evidence where it was done.

Mr. Serj. Levinz. Suppose, my Lord, that I own in *Middlesex*, that I robb'd a Man in *Yorkshire*, will that make me guilty in *Middlesex*?

Mr. Sol. Gen. But if you had stole a Horse in *Yorkshire*, and had that Horse in *Middlesex*, and own'd it, I doubt it would go hard with you in *Middlesex*.

Mr. Sol. Gen. Mr. Serjeant thinks he has put a very home Comparison, but we shall shew how little significant it is by and by.

Mr. Serj. Levinz. My Lord, in the first place we insist upon it; here is no Proof in this Case at all, as to the doing of any Fact at all in the County of *Middlesex*. In the next place, this Information and Petition do not agree; for they have brought an Information, and set forth, That my Lords the Bishops, under pretence of a Petition, did make a Libel, and they have set forth no Petition at all, all the Petitionary part is omitted: If I will take part of a Man's Words, and not the whole, and make a Libel of that part, certainly that is very disingenuous and injurious; for that part that I omit may alter the

Sense of the whole. They here ought to set forth the Petition, with the Direction to the King, and the Prayer at the end, whereby it will appear what the whole is, and what was desir'd by their Petition. But, my Lord, to make this matter a little more clear, whatsoever they say of its being my Lord Archbishop's Hand, we shall prove that if it were so, it could not be done in *Middlesex*; for we shall prove, that my Lord of *Canterbury* had not been in *Middlesex* for three or four months before.

Sir *Robert Sawyer*. Pray let the Information be read, then you will see the variance.

Mr. *Att. Gen.* There is not the latter part (we acknowledge) in the Information.

Mr. *Sol. Gen.* There may be, and is, a *sic Continetur*, and there is no Objection in that at all.

L. *Ch. Just.* It is *sic Continetur*, and that's ———

Sir *Rob. Sawyer*. The truth of it is, this Information has made a very deformed thing of it, has left it neither Head nor Tail: They stile it a *Petition*, but it is without any *Direction* to any-body, and without any *Prayer* for any thing; and without those two it cannot be told what it is.

Mr. *Just. Allybone*. Sir *Rob. Sawyer*, if I mistake not, it is said only under pretence of a *Petition*.

Sir *Rob. Sawyer*. There may be more in the Paper than in the Information, and if all were in, one part might explain another.

Mr. *Sol. Gen.* So there may be more; and I wonder to hear that Objection from Sir *Robert Sawyer*, who has exhibited so many Informations for Libels in pieces taken out of Books.

Mr. *Recorder*. All that we alledge in the Information is contain'd in the Paper, and that's enough for our purpose; we are not bound to recite the whole.

L. *Ch. Just.* Indeed I think it is no material Objection at all.

Mr.

Mr. Serj. *Pemberton*. Truly I think it is very material in this Case ; here's a Petition that is preferred to His Majesty ; take the whole Petition together, and, say they, it is a reasonable Petition ; chop off the Direction and the Prayer, and then here's nothing but the Body of a Petition, without beginning or ending. Or, if a Man will say any thing concerning the King, and do it by way of Petition to himself, that will alter the Case mightily, from a Paper spread about, that should contain only the Body of a Petition, and nothing else.

Sir *Rob. Sawyer*. Pray read that part of the Information.

Mr. *Pollexfen*. If so be there be an Information, and that Information charges a Man with a pretended Petition, and the Evidence comes and proves a Petition, both top and bottom, that is not the Petition in the Information, for that lacking the proper parts of a Petition, is call'd a pretended Petition, but that which is proved is a real one.

Serj. *Baldock*. My Lord, there is nothing in this Objection, as this Record hath it.

Mr. *Att. Gen.* Pray, my Lord, give us leave to state it on our side, as they have done on theirs, and it will be the better understood upon the reading : I hope it is not come to that pass that they would have it ; sure these Gentlemen have not forgot altogether the Practice that has been so frequent in this Court. If there be an Information for a Libel, Is there any thing more frequent than only to recite the material part ? Sure they may say, *In such a Libel is contain'd so and so*, without setting forth the whole Book.

Mr. *Sol. Gen.* How many Tryals have we had here, wherein there has been only a Clause taken out of a Book ; as particularly, *Baxter's Bible*, and *Johnson's Book*, and all by vertue of a *sic Continetur* ?

Mr. *Finch*.

Mr. *Finch*. That comes not up to our Objection here.

Mr. *Just. Powell*. Let us hear the Record read, and then we can judge of it.

Sir *Rob. Sawyer*. We pray, Sir, the Information may be read.

Mr. *Att. Gen*. We are here upon all Occasions chopp'd in upon, and I do not know how they come to take this Liberty; I am sure other People had it not in former times, when these Gentlemen stood where we do; as soon as ever we offer to speak, presently there are two or three upon us.

L. Ch. Just. Let me hear them, Mr. *Attorney*, make their Objection, and let the Record be read, and that will answer that Objection.

Mr. *Att. Gen*. My Lord, as for that other thing, they come and tell us we have set forth a Petition, we say no such thing: In the Information we say, you compos'd a certain Libel *pretensu Petitionis*, in which are contain'd such and such things; and now I pray let it be read.

Mr. *Sol. Gen*. Pray, my Lord, hear me a little first. Take the Information as we have laid it, and I believe there are twenty Presidents that I could give you in an instant of late days practice: So was the Information against Mr. *Baxter*, so was the Information against Mr. *Johnson*, so was the Information against Dr. *Eades*, and so was the Information against Sir *Samuel Barnadiston*: They are all in this form, *sic continetur*; so that as for that matter we are well enough. But here's another thing (say they) You do not set out the Petition; we say, it is a Libel, and it is not the Name we rely on, but there is such a Libel, so we in our Information call it; if it be not a Libel, then are they very innocent; and whether it be or no, is now in Judgment before your Lordship; but if it be as we say, then it is not the

the speaking ill things in the body of a Petition, and then giving it a good Title, and in concluding it with a good Prayer at the end of it; 'tis not, I say, any of these that will sweeten this Crime, nor alter, nor alleviate it at all; if there be that which is Seditious and Libellous in the Body of it, call the Paper what you will, and smooth it with a Preamble, or a Conclusion, that will not make it any thing less a Libel: These things are plain and manifest. We say there is such a thing done, a Libel made *pretensu Petitionis*, do you call it what you will; but we say, these and these things are a Libel upon the King and the Government. We have proved our Case, we have proved there was such a Paper under their Hands; we have proved it was own'd in *Middlesex*, and then we are in your Judgment, whether this be not Evidence sufficient to convict the Defendants.

L. Ch. Just. But they do make an Objection about the Writing and Contriving of it, that it is not proved to be in *Middlesex*.

Mr. Serj. Trinder. My Lord, our Information does not go with a continued Clause, that they framed a Libel *ut sequitur in hac verba*, but we only say, they made a Libel *pretensu Petitionis*; and then we say, *In quo quidem Libello continetur*, so and so; we do not tie our selves up to a particular Recital of all that's in the Paper.

L. Ch. Just. Read the Record.

[Clerk reads]

Ipsi iidem Willielmus Archiepiscopus Cantuariensis, (and the rest) dicto decimo octavo die Maii, anno Regni dicti Domini Regis nunc quarto supradicto vi & armis, &c. apud Westmonasterium predictum in Comitatu Middlesexia, predicto illicite malitiose, seditiose, & scandalose quoddam falsum fictum perniciosum & seditiosum Libellum inscriptis de eodem Domino Rege

Rege & Regali Declaratione & Ordine prædictis
 pretensu Petitionis fabricaverunt composuerunt &
 scripserunt & fabricari componi & scribi causave-
 runt, & eundem falsum fictum malitiosum, perniciosum
 & seditiosum Libellum per ipsos prædictos Willielmum
 Archiepiscopum Cantuariensem, (and the rest) ma-
 nibus suis propriis respectivè subscriptum die anno & loco
 ultimo mentionatis in præsentia dicti Domini Regis
 nunc vi & armis, &c. publicaverunt & publicari
 causaverunt: In quo quidem falso ficto malitioso, perni-
 cioso & seditioso Libello continetur. The humble Peti-
 tion of, &c. —

Mr. Serj. Levinz. It is quite another thing; that
 which is produced from that which is in the Infor-
 mation, by this leaving out a part; for here is the
 Prayer omitted, and the Direction.

Mr. Sol. Gen. Then, my Lord, I think there is no-
 thing in the Case but this mighty Objection of the
 County: And, says Mr. Serj. Levinz, if my Country-
 man confesses in this County that he stole a Horse in
Yorkshire, you shall not try him in *London*, but in *York-*
shire, because by his own Confession the Fact is in
 another County.

Mr. Serj. Levinz. I did not put the Case so.

Mr. Sol. Gen. But take the Fact of the Case as it is
 here, my Lord, the Bishops come in *Middlesex* and
 own this Paper; my Lord Archbishop owns it to be
 his Writing, and the rest of the Bishops own their
 Hands; if they had done as Mr. Serjeant's *Yorkshire-*
man did, and said, We own we did this, but it was
 in the County of *York*; then it would have been like
 the Case that these Gentlemen put: But here we are
 in a plain Case of another nature; my Lord Arch-
 bishop comes here in *Middlesex*, and owns that he
 writ the Paper, the other Bishops they sign'd it;
 now it does lie certainly in their knowledge where
 this was done, and they should have declar'd then;
 but

but they have own'd it as their Paper, and the signing and writing of it, which is enough for us.

Mr. *Finch*. I own this to be my Paper, therefore I writ it in the County of *Middlesex*; Is that a Consequence? I am very glad they are no better at their Inferences.

Mr. *Sol. Gen.* They have own'd the thing in *Middlesex* that we insist upon, and they have not own'd it with any Qualification: If they had said, it was done in another County, then you must have taken it to be as they said it; then if they do not distinguish the Place of the Fact, your Lordship can only take it to be where they own'd it, it would be supposed to be done in that place; for when they own'd the Fact, it will be supposed, if they do not say where it was done, that it was done where they own'd it, because the King cannot tell where it was done: But the Evidence comes out of their own mouths, they may give satisfaction where it was done, for they know it; and till that be done, the Supposition is against them, that it was done in the place where they own'd it; and that is a plain Case wheresoever a man is to speak of his own Fact. Indeed if I publish the Writing of another Person which is Libellous, then there must be a particular Proof of the Place, because it is not my own Fact; but if those Lords publish a Libel that they make themselves, it is in their own knowledge, and in their own power to tell where it was done, because it is their own Act and Deed. It is true, if my Lords had publish'd a Paper that was contrived by some of their Council, it had been some Excuse, and they must have only suffer'd for that publication in the place where it was done; but they are here for Writing this they have own'd in this County; and therefore it lies upon them to prove it done elsewhere. There is
ano-

another Objection, my Lord, made, That here is no Evidence of a Publication; my Lord, I take it to be a Publication in it self; Is it possible for a Man to write a Libel? to set his Name? and part with it? and it coming to the Hands of the King, that this is not a Publication? It is not their saying, *We did not publish it*, that will excuse them; for, can there be a greater Publication in it self than this, when Men have set their Hands to it, and owned their Names? What makes the Fact in this Case? If a Deed be denied to be *factum* of such a one, what is the proof of it, but setting the Hand and Seal, and the Delivery? There is owning the Paper, and setting their Hands is a Publication in it self, and therefore they cannot make any such Objection. My Lord, if there were occasion, we have Authorities enough to this purpose, and we will give them scope enough if they will argue this matter; and if they have any Evidence, we desire to hear what they can say to it.

Mr. *Att. Gen.* As for this matter of Fact, my Lord, if I take it right, they do not Controvert the Publishing, but (say they) pray make it out, where it was written or composed; I confess this would be a Business worth the while, for all Persons that act in this manner, and are concerned in making of Libels, to understand for their advantage, no Man doubts in the matter of Treason, but it is local; then put the Case a Man is found in *Middlesex* with a Treasonable Paper in his Pocket, (I do not make a Comparison, as if this was such a Paper, I hope I am not so understood, but I only put it as a Case, and that the Law is so, is beyond all Controversy) then the Man is indicted here in *Midds.* for framing and composing such a Treasonable Libel, and he comes to be try'd, and (says he) pray prove where I made and composed it, for tho' you found it in my Pocket

Pocket in the County of *Midds.* yet I might do it in the County of *York*; upon my word, this had been a very good Defence for Mr. *Sidney*, who was indicted, convicted, and attainted for making a Treasonable Paper, which was found in his Study; might not he have put the same Objection? might not Mr. *Sidney* have said, (it was great pity he did not understand it) Pray prove where I did it, for I did it elsewhere than in this County.—

Mr. *Sol. Gen.* He did say it, I remember.

Mr. *Att. Gen.* Truly, my Lord, I would not hear any Answer given to this, for it would make the King in a very woful Case: Here is a Paper that is found in the County of *Midds.* and this is there owned by you to be written and subscribed by you; pray do you prove it that it was written elsewhere.

Mr. *Serj. Pemb.* My Lord, we will do it, we will be govern'd by Mr. *Attorney* for once.

Mr. *Serj. Levinz.* We will prove that my Lord Archbishop was not in *Middlesex* in seven Months before; and truly I think Mr. *Attorney's* Case of a Paper found about a Man, or in his Custody, will not come up to our Case; for was this Paper found about us, surely that is not pretended.

Mr. *Serj. Pemb.* Your Lordship sees by the very frame of the Petition, that this Petition which they call a Libel was made after the King's Order concerning reading this Declaration: Now we shall prove that my Lord Archbishop, whose Hand-writing they prove this to be, was not out from *Lambeth-House* in two Months before, nor till he was before the Council.

Sir *Rob. Sawyer.* Which was long after that time when it was made.

Mr. *Serj. Pemb.* So that this cannot be written in the County of *Middlesex.* — Call *Francis Nicholls.*

— Mr. *Nicholls* was sworn.

Sir

Sir R. Sawyer. Do you remember the 18th of May last?

Mr. Nicholls. Yes, Sir.

Sir R. Sawyer. Pray how was it with my Lord Archbishop of *Canterbury* at that time, and before that, did he go abroad?

Mr. Nicholls. My Lord, I am very sure that my Lord his Grace of *Cant.* whom I have served in his Bed-Chamber these seven Years, never stirred out of the Gate of *Lambeth-House* since *Michaelmas* last.

Sir R. Sawyer. Till when, Mr. Nicholls?

Mr. Nicholls. Not till the time he was summoned before the Council.

Mr. Serj. Pemb. Now I hope we have given them a full proof that it could not be in *Middlesex*.

—Call *Thomas Smith*.

Mr. Smith was not examined.

Mr. Finch. Truly, my Lord, I think that what we have proved, or what Proof we further offer of my Lord of *Canterbury's* not being in *Middlesex* for so long a time, is *ex abundanti*, and we need it not; for with humble Submission, in point of Law, it is incumbent upon them that are to prove the Charge in the Information, to prove where it was done; because the Locality of it is part of the thing, they ought to prove it; in it's nature it is local, there is a Place assigned in the Information, and unless they prove it was done in the Place that they have laid, they have not proved the Charge in the Information. Now, my Lord, they have not made any Proof of that, and for proof of Publication, I think they have offered none to your Lordship, they never did call it so yet, and truly I never did hear or know that the owning of their Hands at the Council-Table was a Publication of a Libel; it is owning the Writing, but it is not an owning where the Writing was made; but where it was written,
and

and where it was made, is of necessity to be proved ; before the Charge upon a Record, in a Court of Justice, can be said to be made out, it is a local Charge, and in Justice the Locality must be proved, or the Information fails : my Lord, they have offered no Proof to it, and they have not yet gone to the second part of the Information, for as to the Publication of it, there is not a tittle of Proof offered, but only the owning of their Hands upon their Examination at the Council, and no Man did ever yet think that answering a Question, and owning a Paper at the Council-Table, upon a Question put by the King himself was a Publication of a Libel.

Mr. Serjeant *Baldock*. Pray, my Lord, hear me a Word to that ; Though the thing be never so local, yet there must be some place where a thing that was done, was done : Then if nothing else appears but what was done in *Westminster*, in the County of *Middlesex*, unless they shew the contrary, that must be the very place where it was done.

Mr. *Solicitor-General*. Here is a great deal of Prevarication in this matter, and I would observe to your Lordship how they do use the Court ill in it ; pray, my Lord, What is it we are upon ? we are proving that these seven Lords the Bishops signed this Paper ; and I think we have proved it sufficiently out of their own Mouths : But (say they) it was not signed in the County of *Middlesex*, but in the County of *Surrey*. All this is but Imagination, and they would have the Court to imagine it too ; For how do they prove it ? They would have your Lordship and the Jury believe that it was signed elsewhere, because my Lord Archbishop has not been out of his House in some Months before ; it is all but Inference, and Argument, and Imagination. But still, Gentlemen, do you answer what I objected to you ? Does it not lie in their Power to
P shew

210 *The Tryal of the Seven Bishops.*

shew where it was signed? Here are six more, besides the Archbishop, where was it signed by them? Here are six of the Bishops, that it does not appear where they signed it; but they confess at *Whitehall*, in *Middlesex*, that they did set their Hands——

Mr. Serj. *Levinz*. Ay, they did so, and what then?

Mr. *Sollicitor-General*. Ay, and ay too; if they did so, the Presumption and Common Intendment upon such Evidence is, That it was done in the Place where it was owned; and the rather, for that Reason that I said before, That it lies in their Knowledge, and therefore it is incumbent upon them to prove, That it was not in the County of *Middlesex*: So that this Objection I take rather to be an Invention of the Council than the Truth of the Fact, because they that can make this out, do not. And as to what they say of my Lord Archbishop, That he has not been out of Doors for so long, who can prove such a thing? Certainly my Lord was able to come, for any thing that appears; he has been here twice, and he was able to come to the Council-Board: But when all is done, my Lord Archbishop is certainly able to put this matter out of doubt, for he may easily prove it, if the Fact be so, and that will satisfy the Court and every Body, That it was signed by him at *Lambeth*; if he designs to deal sincerely with your Lordship and the Court, and the Jury; but certainly it is not to be proved by a Circumstance, such a one as this is, but he ought to give your Lordship and the Jury Satisfaction about this Fact: He ought to say, 'Tis true, I did sign it, but it was at *Lambeth-House*; that indeed would be a down-right Stroke to us: But to go upon a Supposition, That because my Lord Archbishop was not out of his House for so long together, therefore they are all not Guilty, is a very hard and foreign Inference. My Lord, there's another Mat-
ter

The Tryal of the Seven Bishops. 211

ter that they insist upon, and that is about the Publication; that is as plain as any thing can be, that here is a full Proof of a Publication, for if the Paper be Libellous, where-ever that Paper is, that is a Publishing, where-ever the Paper travels, how far so-ever it goes, it is a Publication of it by these Persons that signed it: I believe no body thinks that this should fly into the King's hand, but some body brought it to him; and certainly, my Lord, if your Opinion should be, that this Paper is Libellous, then where-ever it is, it is a Publishing, which is our Offence: where-ever it is found, it is a Publication; for there is the mistake of these Gentlemen, they fancy, that unless there was a publick Delivery of this Paper abroad, nothing can be a Publication; but I rely upon it, they setting their Names to it, made it their Paper; and where-ever it was afterwards found, that did follow the Paper where-ever it went, and was a Publication of it; it was in their Power, being their own Contrivance; it was made and formed by themselves, and no body will believe, when it was their own Hands that they put to it, that any body else could have any power over it; for ought appears, no body else was at work about it, and when there were so many Learned Prelates that had signed such a Paper, no one can believe they would let it go out of their Hands, but by their Consent and Direction: Is not this a Proof of the Publishing? Do they give your Lordships any Evidence that they had stifled this Paper? If they had so done, they had said something, but will any body believe that this should be done in vain? Can any body assign a Reason why so solemn a thing as this should be done to no End and Purpose? Why a Paper should be framed that rails at the King's two Declarations? Why a Paper that gives Reasons why they could not read it in their

212 *The Tryal of the Seven Bishops.*

Churches, and signed with such Solemnity by all these Noble Lords, we submit this to you in point of Law, and the Law is plain in it, that if this Paper be Libellous, and it is found in the County of *Middlesex*, there is a Publication of that Libel. I shall mention to your Lordship that Case of *Williams*, which is reported in the Second Part of *Roll's Reports*, Mr. *Finch* made use of it in the Case of *Sidney*; it was the great Case relied upon, and that guided and governed that Case (as I apprehend) from the Verdict and Judgment that was given in it. This Case was 15 *Jacobi*. It seems *Williams* was a Barrister of the *Inner-Temple*, and it seems being an high Catholick for Opinion and Judgment, he was expelled the House, and he being so expelled (being a sort of a *Virtuoso*) wrote a Book called *Baalams Ass*, and therein he makes use of the Prophecy of the Prophet *Daniel*, and he makes Application of it according to his own particular Fancy. He writes there, That this World was near at an end; and he said, Those ill Days were come that that Prophecy had spoken of, and because of the Impurity of Prince, and Priest, and People, and other things that happened, those were the worst of Days, and therefore the last; and that certainly we had the worst Prince that ever was in the World, when he wrote this Book, what does he do? He was a little more close than my Lords the Bishops, and pins it up, or seals it up, and it was brought to the King; and what is this more than the Case before your Lordship? They indeed say, I do this by way of Advice to the King; so, said he, I do this by way of Advice to the King, for God forbid that any of this should happen to the King, and so what he does was by way of Advice, and he prayed God to avert it from him. Here was as good a Prayer as there is in this Paper; and there was a good Design; he

made

The Tryal of the Seven Bishops. 213

made use of the Prophet *Daniel*, and applied his Words. Well, what was done upon it? This was never published; for the Question was before the Court, whether this Sealing of it up, and not delivering it to any other body were a Publication: the Court was of Opinion, that the very Writing of it was a Publication; they did not value the Delivery of it to the Prince, but it was proved he Writit, and that made it Treason. My Lord, we have Cases enough in my Lord *Hobart* for this Matter, Sir *Baptist Hicks's* Case, and my Lady *Hatton's* Case, there was only a Letter sealed up and deliver'd to the Party.

L. Ch. Just. You need not trouble your self about that, Mr. *Solicitor*.

Mr. Sol. Gen. If the Case then be thus, I take it, it will turn upon this Fact; they have given your Lordship no Proof where this Paper was Signed by them; here are seven Persons that had a hand in it, and here is only one Person whom they have insisted on to be infirm, and kept his House for a great while together. We say the Publishing follows the Libel where-ever it goes; the Libel is in the County of *Middlesex*, they have confessed it in the County of *Middlesex*, and they did not distinguish where it was done. Then if they will not distinguish upon the Evidence, no Man ought to distinguish, but ought to presume it was done in that place where they owned it.

Mr. Attor. Gen. I did not apprehend we were got so far, that they opposed us in the Publication.

Sir Rob. Sawyer. Yes we did, for you have given no Evidence of it.

Mr. Attor. Gen. Surely, my Lord, for that we have given a sufficient Evidence, and they have given some Proof of it, as to my Lord Archbishop; that because he had not been from *Lambeth*, therefore he did not publish, nor could cause it to be published;

214 *The Tryal of the Seven Bishops.*

lished; for your Lordship sees by this Information, they are not only to answer the *Publicavit*, but also the *Publicari causavit*; for do you doubt, Gentlemen of the Law in this Case, that if I compose a Libel in *Surry*, for example, and send a Person over into *Middlesex*, I am not Guilty of the Publishing?

Sir *Rob. Sawyer*. That is not your Case, Mr. Attorney.

Mr. *Finch*. That were clear if it were so, but it is not so.

Mr. *Attor. Gen.* My Lord Archbishop's Case signifies nothing, if we shew it was published in *Middlesex*, and you give no Evidence to the contrary but it might be there; and I am sure as to the rest of my Lords the Bishops, there is no Evidence at all given. Here is a Petition that we say is a Libel, they (it may be) will make that a Question; this is delivered to the King's own Hand in the County of *Middlesex*, and there are as many Cases as any one Man can name, that this amounts to a Publication by the Party; for if I send a Letter by the Post sealed, that no-body can see but the Party himself, and he that writ it, it is adjudged over and over again, it is a Libel.

Mr. *Justice Powel*. That you need not labour, Mr. Attorney, for that's the Case of *Williams of Essex*; but how do you apply it to the Case now before us?

Mr. *Attor. Gen.* That's an Answer to their Objection as to the Publication.

Mr. *Justice Powel*. But what say you to the first part, you have not proved that it was written in *Middlesex*.

Mr. *Attor. Gen.* There is the Case of *Barrow and Lewellin in Hobart*, and likewise the Case of Sir *Baptist Hicks*, which is reported in *Hobart* and *Popham*; and in *Popham*, towards the end of the Case, there is
a re-

The Tryal of the Seven Bishops. 215

a remarkable Passage. Says that *Case*, If it should not be punishable at the Suit of the King, there would be no Remedy; for the Party cannot bring an Action, because he can be no Witness for himself, and it is only known betwixt them two; but a Witness for the King he may be, to prove his own Receipt of the Letter, and the Party's Hand.

Mr. Justice *Powel*. You need not labour that Point, I'll tell you, Mr. Attorney; for the Law is very clear in that Point, I think, if you bring it home to your *Case*.

Mr. *Attor. Gen.* Then here's the *Case* in short, my Lord, That my Lords the Bishops have caused to be made and written this Petition; they are made Parties to it by setting their Names, and this is a continued Act; whatsoever is written there, is my Lord Archbishop's Writing, where-ever it goes; as I'll put you a *Case* that's very well known. If I take away Goods from a Man in the County of *Cumberland*, and I am found with them in the County of *Middlesex*, it is a continued Act, and makes all but one Felony, and I shall be Tried here in *Middlesex* for it: If a Man write a thing in one County, and it is sent and dispersed in another County, that still continues to be his Fact, tho' (it may be) the first part was not in the same County with the other; but suppose all this while that part should not affect my Lord of *Canterbury*, the causing it to be Published does.

Mr. Justice *Powel*. Do you think, Mr. Attorney, that Writing in one County is such a continued Act, that he may be said to write it in another County?

Mr. *Attor. Gen.* Sir, I take it, where there is a complicated Crime of Writing and Publishing a Libel, and the beginning of it is in one County, and the carrying it on is in another, that is a continued Act, and may be Tried in either County.

216 *The Tryal of the Seven Bishops.*

L. Ch. Just. It is all one Act of Libelling (as they say.)

Mr. Justice *Holloway*. In Cases of Felony 'tis so, taking in one County, and being found with the Goods in another, it is Felony in either County.

Mr. Justice *Powel*. But in that Case they are two Felonies; for it is Robbery in the one County, and but bare Felony in the other.

Mr. Sol. Gen. Suppose that my Lords the Bishops signed this Paper in another County, and my Lord Archbishop consents to have it sent into *Middlesex*; Is not this a causing it to be published in another County?

Mr. Justice *Powel*. Yes, it may be, if you prove his Consent.

Mr. Sol. Gen. Then suppose further, which may very well consist with my Lord Archbishop's Evidence, of his not being out of *Lambeth* in so long time, the rest of the Bishops might sign it in *Middlesex*, or it may be in that Place; and then they carry it by my Lord's Consent over hither, into this County; Is not this a causing it to be published? the Delivery with his Consent certainly is a Proof of that, for our Information goes two ways, For Making, Contriving, Writing, and Publishing, that's one: And then, For causing it to be Made, Contrived, and Published, that's the other: And if I prove that he caused it to be published, he may be found Guilty as to that part, and not Guilty as to the other; for the Information is not so entire, but that the King has his Choice; if the Archbishop had not signed it, or written it, but had caused it to be published, he may be found Guilty of so much: But if he be Guilty of any other of these things, it is enough; and if he be Guilty of none of the other things laid in the Information; yet if he be Guilty of causing it to be published, by his consenting that
the

The Tryal of the Seven Bishops. 217

the rest of the Bishops should do it, that will be enough to maintain this Information. Then, my Lord, is there any Evidence brought against what we have prov'd, That he did not consent?

Mr. Justice *Powel*. But where was this Consent of his given, Mr. *Solicitor*?

Mr. *Sol. Gen.* Pray, good Sir, give me your Favour, I think I am in a plain Case.

Mr. Serj. *Pemberton*. So you are truly.

Mr. *Sol. Gen.* Why, good Sir, you ought to make out the Locality, if you'll take advantage of it.

Mr. Serj. *Pemberton*. That's very well indeed, this is the first time I ever heard that Doctrine.

Mr. *Sol. Gen.* I cannot help that, but certainly the Law is plain, we have proved there was such a Fact as this done; and they do not go about to prove that it was done elsewhere than where we have laid it; for if they did, their Witnesses would be cross-examined by us; and then we know what would become of them, then the Truth of the matter would come out: Therefore I would make all this *constare*. The Archbishop might be at *Lambeth*, and yet Guilty in *Middlesex*, by his Concurrence with what was done in *Middlesex*: And I say, my Lord, this is natural, upon the Evidence that has been given, because when they were interrogated at the Council, and confessed the Paper to be theirs, they made no such Explanation of their Confession, of which they can make any Advantage in their Defence. Here has been no-body produced that proves any thing to be done out of *Middlesex*; so that still if he's Guilty of the Fact proved, he must be Guilty in *Middlesex*.

Serjeant *Baldock*. And it does not appear, in this Case, but that my Lord Archbishop might write the same thing in *Middlesex*, tho' he was at *Lambeth* so long as the Witness speaks of.

Mr.

218 *The Tryal of the Seven Bishops.*

Mr. Justice *Powel.* How do you make out that, Brother?

Serj. *Baldock.* He might do it when he came over to the Council.

Sir *Rob. Sawyer.* He must do it after it was presented.

Serj. *Baldock.* Might he not be so long here on this side the Water, as to make such a short thing as this, before it was delivered? half a quarter of an Hour would have done it.

L. *Ch. Just.* That's a thing not to be presumed, Brother, especially since he is proved not to have been in *Middlesex* for so long together.

Sir *Rob. Sawyer.* Mr. Serjeant is mightily mistaken, for it is not pretended, That it was deliver'd at the time when the Archbishop, and my Lords the Bishops, were before the Council.

Mr. *Recorder.* Either the Making and Contriving, or the Publishing of this Libel will do upon this Information, for they shall be taken to be one continued complicated Act; and then the Party may be try'd in either of the Counties, as the King will; as in the Case of Treason it has been over and over again adjudged: That if a Man does one Act of Treason in one County, and afterwards goes into another County, and does another Act of Treason, the Jury of either of the Counties may enquire of the Fact done in the other. If they then should take those two as several Acts, they were several Offences, and they may be found Guilty of the one, and acquitted of the other; but if they are taken as one continued Act, they are but one Offence, and the Jury of either County may try it. If then, in this Case, the Jury of this County may take notice of the Publication, which was here, as certainly they may, if they will agree, as the Law certainly is, That the Writing of a Letter will be a sufficient Publication, if the mat-

The Tryal of the Seven Bishops. 219

matter be Libellous. And there are multitudes of Presidents for that; and that the bare setting of a Man's Hand has been adjudged to be a Publication: Then give me leave, my Lord, to bring it to a similar Case: Suppose a Man write a scandalous Letter from *London*, to a Judge or Magistrate in *Exeter*; and sends it by the Post, and the Letter is received from the Post at *Exeter*, and there open'd; Would any Man make a Question whether the Gentleman that sent the Letter may not be indicted and prosecuted for a Libel at *Exeter*, where the Libel was received?

Mr. Just. *Powel*. There's no question of that, Mr. *Recorder*; that comes not home to the Fact in our Case, undoubtedly in the Case that you put, the Law is as you said, but it is far different from this Case.

L. Ch. Just. There's no Body opposes the Publication, but the framing of it, where it was made.

Mr. *Recorder*. Supposing then the Party were at *Exeter*, and he were interrogated before the Magistrate, Whether that were his Hand or no? and he should own it to be his Hand; can any body doubt whether his owning that to be his Hand would be a sufficient Evidence to prove a Publication?

Mr. Just. *Powel*. But is that any Evidence where it was Written? Or if it be not proved that it was received at *Exeter*, would that be a Proof of a Publication at *Exeter*?

L. Ch. Just. They do not deny the Publication.

Sir *Rob. Samyer*. We do deny that there was any Publication; and they have proved no place where it was made.

Mr. *Sol. Gen.* My Lord, we are not for turning my Lords the Bishops out of the way of Proof, that

220 *The Tryal of the Seven Bishops.*

that is usual in such Cases ; let them take it if they will, That this was contrived and made in *Surrey*. But can they publish it in *Middlesex*, without committing an Offence ? and that is it we stand upon : We are not for laying a greater Load upon my Lords the Bishops than our Proof will answer.

Sir *Rob. Sawyer*. We thank you for your Complement, Mr. *Solicitor*.

Mr. *Sol. Gen.* Is this a fair way, of interrupting us when we are speaking ? Durst any one have served you so when you were in the King's Service ? We would make our Duty as easie as we can to my Lords the Bishops ; and it may be easier than other Men would have made it. But, my Lord, let it be a doubtful Case, that we cannot tell which County it was made and contrived in ; if it were made and contrived in another County, yet when they brought it into *Middlesex*, there was a Publication in *Middlesex* ; and if my Lord of *Canterbury* consented to it, and if he caused it to be published, how can any Body ever get him off from that causing of it to be published ? Here is a Paper that must be supposed to be my Lord Archbishop's Paper : Now either the World must look upon it to be an Imposture put upon my Lords the Bishops, or a real Paper made by them. If it were an Imposture and an Affront put upon the Bishops, they ought to make it out for their own Vindication, and to prove themselves Innocent : If they do that, they do well, and they ought to have Satisfaction made them by those that have so highly injured them ; and the King cannot be better pleased, I am sure, than to find them so : But if Men will look one way and act another, they must expect to be dealt with accordingly. Will any Man that has heard this Evidence, and sees that these Gentlemen will not go the right way to work
to

to prove their own Innocence, believe them to be not Guilty? 'Tis plain they contrived it and signed it; for can any one imagine that they set their Hands to a Paper that was not formed and contrived by themselves? Then let it go, that this was done in another County, and we cannot punish the Writing of it in this County; yet still they are Guilty of causing it to be published in this County, and for that we may punish them here: We will be content with having that found that we have proved, which certainly is an Offence.

Sir Rob. Sawyer. We oppose that, Sir.

Mr. Sol. Gen. You oppose it! I know you'll oppose common Sense; we don't speak to you, we speak to the Court; we are content with what is plain, and do not desire to insist upon any strained Construction; we say this is Natural Evidence for us: If this thing be a Libel, as we say it is, then the causing it to be published is an Offence: The Publication we say was here in *Middlesex*, and of that there is Clear Evidence, because it was found there, and came from the King's Hand, to whom it was directed, and it could not come to the King's Hand out of their Custody, without their Consent: This (we say) is a clear Evidence of causing it to be published, let the rest go as it will, because we will take the easiest part of the Case, and not go upon Strains.

Mr. Serj. Trinder. The greatest Question is, I think, now come to the Publishing——

L. Ch. Just. The Court is of Opinion, that its coming to the King is a Publishing.

M. Just. Powel. Ay, my Lord, if it be proved to be done by them.

Mr. Serj. Pemberton. Before the Court deliver their Opinion, we desire to be heard.

L. Ch.

222 *The Tryal of the Seven Bishops.*

L.Ch. Just. Brother, you shall be heard in good time, but let them make an end on the other side, and when the King's Council have done we'll hear you.

Mr. Serj. Trinder. My Lord, upon the Question of Publishing, it has been insisted upon, and the Court seems to be very much of the same Opinion, That the Writing of it is a Publishing: That it is without Controversie, if the Writing of it fell out to be in *Middlesex*, where the Information is laid; but that they would not have to be so by Argument, because the Archbishop had kept in at *Lambeth* so long. But suppose that it were so as they would have it, that is only as to the Archbishop, he being the Writer of it, but yet notwithstanding, that the other six might subscribe it in *Middlesex*, taking it, that there is such a Face in their Argument as they would have it.

Mr. Sol. Gen. We will lay no greater Load on the other six than we do upon my Lord Archbishop, and we say they are all guilty of the Publication in *Middlesex*.

Mr. Serj. Trinder. Pray, Sir, spare me; this Paper was in the Archbishop's Custody and Power, he making of it himself; and regularly it could not have come out of his custody in common supposition, but it must come with his Consent. It was afterwards in the power of the other Six, they had it to subscribe; where the Superscription was *non constat*, they it may be can prove it themselves, but I will only deduce this Argument; That if it after comes into *Middlesex*, it must be taken by Presumption to be subscribed by them there, and published, it must be taken by Presumption so to be.

L.Ch. Just. No, Brother, we ought not to do any thing by Presumption here.

Mr.

The Tryal of the Seven Bishops. 223

Mr. Just. *Powel.* No, no, by no means, we must not go upon Presumptions, but Proofs.

L. Ch. *Just.* I will not presume it to be made in *Middlesex.*

Mr. Serj. *Trinder.* But it is proved to be published in *Middlesex.*

Sir Rob. *Sawyer.* My Lord, with submission, there is no Evidence of the Publication.

Mr. *Attor. Gen.* That the Court is to judge of.

Sir Rob. *Sawyer.* Pray, good my Lord, what Instance of a Publication have they given?

Mr. *Sol. Gen.* The Court has heard the Evidence, we leave it there.

Sir Rob. *Sawyer.* Was it their owning and acknowledging it was their Hands, when the King asked them the Question at the Council-Table? Surely the King's Council won't pretend that was a Publication, when it was done at the King's Command; it was certainly the King that published it then, and not my Lords the Bishops.

Mr. *Attor. Gen.* Well said.

Sir Rob. *Sawyer.* Don't you remember that when Mr. *Blaithwayt* said the King gave it to be read, it was shewed to the Bishops?

L. Ch. *Just.* I remember what Mr. *Blathwayt* gave of the Passages at the Council-Board very well; and I know what Mr. Attorney did press about the King's promising to take no advantage.

Mr. *Attor. Gen.* My Lord, Mr. Attorney is on the other side, he did not press it.

L. Ch. *Just.* Sir Robert *Sawyer* I mean; I beg both your Pardons, Gentlemen, I think I have done Injury to you both,

Sir Rob. *Sawyer.* My Lord, we say there is no Evidence at all, that ever this was sent to the King by the Archbishop, or any of my Lords the Bishops: And as for the Cases that they have put, they might have

224 *The Tryal of the Seven Bishops.*

have put five hundred Cafes, and all nothing to the purpose.

Mr. *Sol. Gen.* So they might, and done just as others had done before them.

Sir *Rob. Sawyer.* And so are these; for here is the Question: We are in a Case where the Publication is that which makes it a Crime: Now I would have them (if they can) put me any such Case, and then apply it to this; in *Williams's* Case the Question is quite otherwise. And so in any Case of Treason it must do; where-ever there is an Overt Act proved, it is the Treasonable Intention, and the ill Mind of the Traytor that is the Crime, and the Treason (the Overt Act) is only to be the Evidence of it: In that Case of *Williams*, with submission, my Lord, the Publication was not at all necessary, but the very secretest Act that could be done by him (if it were an Act) is an evidence of the Mind, and so the sending of the Book to the King himself, tho' no-body else did see it, was an Evidence of the Crime of Treason, yet it could not be called a Publication. But in the other Case of Sir *Baptist Hicks*, which was in the *Star-Chamber*, about sending a Letter of Challenge, it was plainly resolved that it was no Publication of the Letter, and that was not the ground of the Judgment given against him there, that it was the Publication of a Libel, but the very Fact was a particular Offence; for (said the Court there) if you will send a Letter to a private Man, and that is a Letter that will provoke him to break the Peace, that is an Offence punishable in the *Star-Chamber*; but that is not the Reason which was alledged, because no Action will lie for want of Proof, but quite the contrary; because they may produce the Porter or Party that brought it, and prove that it came from this Man's hands: And I do not question but that in the King's Bench, at this

Day,

Day, if a Man will write a Letter privately to provoke another Man to fight, there will lie an Information, but not for a Libel; for there it will be necessary to make it an Offence, that there be a Publication; for that is the very form of the Crime, and upon that ground were all those Judgments against Libels in the *Star-Chamber*. My Lord, I agree to write a Letter to the King of another Person, or to make a Petition to the King concerning another Person, as of my Lord Chancellor, or the Judges, or the like, to complain to the King of them scandalously, with provoking and reviling Language, that is a Publication; and so if I write a Letter to one Man of another; if there be Scandal in a Letter, that is a Publication of a Libel; and that is the difference that has been always taken, where it is essential to make it a Libel, that there be a Publication, such a Publication must be proved, and the Delivery of a Letter to a Man that concerns himself, is no Publication: but in this case they have not so much as proved that it was delivered to the King.

Mr. Serj. *Pemb.* My Lord, with your Lordship's Leave, I take it, that they have given no manner of Evidence of a Publication; to say, the writing and subscribing of their Names to a Paper, is a Publication of that Paper, is such a Doctrine truly as I never heard before; supposing this Paper had lain in my Study, subscribed by me, but never went further, Would this have been a Publication? They never said any such thing. As to *Algernon Sidney's* Case, there was no colour for it, that it should be a Publication; but it was an Overt Act of Treason to compose such a Book: They have proved by our Confession here, that we have subscribed this Paper, they would take it now, that therefore it must be presumed we sent this to the King, and so furnish

226 *The Tryal of the Seven Bishops.*

us into an Information for making and publishing a Libel, which we sent to the King; but they do not prove it all: My Lord, there are a thousand ways that it might come into *Middlesex*, and perhaps come to the King's Hands too, without our Knowledge of Delivery; and sure you will not presume these Noble Persons, without Evidence, to be guilty of such an Offence as this is suggested to be; so that, My Lord, and Gentlemen of the Jury, 'tis impossible for you to find this a Publication in *Middlesex*; and for the other thing, (the writing this Paper) they that would make it an Offence, must prove where it was done.

Mr. Serj. *Levinz.* My Lord, the Answer that I shall give to what has been said on the other side is very short; the Cases that have been cited are all Law, but not one tittle to this purpose: In Sir *Baptist Hicks's* Case, and *Williams's* Case, it was proved they all sent them to the Places whither they were directed; but is there a tittle of Proof that these Bishops sent it here? In all those Cases, they must send it either by a Porter or a Carrier, and they send it as their own Act, and when it comes there by their sending, that is sufficient Proof of their Act in the place whither it is sent: And for *Sidney's* Case, there was Treason in the very Libel and Book that he made, and he was not indicted for Publishing, but for Treason, in the Place where it was found, because it was found in his Possession: But was this ever in my Lord Archbishop's Possession in *Middlesex*, or the rest of the Bishops, and were they publishing of it? if it had, then it had been their Act clearly: But this is the thing wherein they are defective, that they do not prove that my Lords the Bishops sent or brought it here, but on the *Question* ask'd them by the King, they acknowledg'd it to be their Hands: So that, my Lord, there's no Proof of any Fact done here, but Acknowledgment of a Fact
done,

The Tryal of the Seven Bishops. 227

done no-body knows where, on the King's Question here in *Middlesex*; Is that a Proof of this *Information*?

Mr. *Finch*. Pray, my Lord, spare me a Word on the same side, let us see what the Evidence is. The Evidence is this, That the King brought the Paper to the Council-Table, and the Bishops owned their Hands to it: This is the Effect of the Evidence, and all that is to prove the Forming and Making a Libel in *Middlesex*, and the Publication of that Libel. And what is therefore inferr'd from thence? Why, having prov'd the King brought the Paper to the Council-table, and the Bishops own'd their Hands, therefore, 1st, the Bishops made this Libel in *Middlesex*; 2^{dly}, they brought it to the Council-Table, and publish'd it at the Council-table, else there is no Proof at all; for here's nothing of Evidence given of any Fact, but because they acknowledg'd it, therefore they made it, therefore they gave it to the King in *Middlesex*: This were good Evidence if they had had the help of a Supposition to make it good; but they want that, nor must any such thing be admitted; but I think they are such gross false Consequences, that I doubt not you'll be of Opinion here's no proof of a Publication in *Middlesex*; and then there's none at all against my Lords the Bishops.

Mr. *Pollexfen*. I must confess I hear them say two Acts prove a Publication in this Case; the one is, the Writing of the Libel, and the Subscribing. If so, then I think, upon the Evidence that has been given, the Court must needs be satisfied, that the Writing of it was in *Surry*: The next is, their owning their Hands; for there is no Act done that appears, or any Evidence against them of any Act done, from the time of the Writing, to the time that they were asked, *Is this your Hand*? Surely no Man would ever think this to be a Publication, where one is asked by Authority, whether such a

228 *The Tryal of the Seven Bishops.*

Paper be his Hand, and he acknowledges it in Answer to that Question, to turn this to be a Crime, I think it can never be done, nor never was done before. Then there is nothing in the Case, that they can hold to for Evidence, and Proof against my Lords the Bishops, but the Writing; and that is apparent to have been in *Surry*, or otherwise they must hold that the Answer to the King's Question, this is my Hand, is a Publication. But truly, my Lord, I think neither of these will do: But, my Lord, to me this is a great Evidence in it self against the Proof of a Publication, the Care and Wariness that has been used, that there should be nothing of this Matter known, from the time that it was written, to the time that they came to be examined and summoned to appear as Offenders. My Lord, the nature of Libels is to publish and proclaim Scandal and Defamation, or else it loses its End, and consequently its Name: This, as it stands upon their Evidence, is a monstrous Proof for my Lords the Bishops, against the King's Council; for it seems, 'tis a very private Matter, so cautiously and warily carried, that there is not any Evidence of the Fact, but only the Names of the Persons that writ it, till they come to be examined by the greatest Authority, *Is this your Hand?* and then they own it so to be; how can this be taken to be a Publication? and it will be a thing of wonderful Consequence, if an Answer to a Question put by Authority should amount to a Crime, as it would in this Case, that would be as if Authority, that should be employ'd to do Right, would be turned to do the greatest Wrong; for it is the Duty of all Men to answer when examined by a lawful Authority, and it would never be offer'd at sure in any other Case: If a Man comes before a Magistrate, and confesses any thing, that indeed is Evidence, but is not a Crime;

The Tryal of the Seven Bishops. 229

Crime ; for there is a great difference between Evidence and the Crime ; but that this should be both an Evidence and a Crime too, is, I think, a very strange Construction ; and for the other part (the writing of it) I suppose the Court is satisfied, that it was in another County.

Sir Geo. Treby. I desire your Lordship to spare me a Word, which I think has not been observed by the Council that have spoke before. The Question that remains, is, Whether my Lords the Bishops did *Publish* this Paper ? This is a matter of Fact that lies upon the Prosecutors to prove. Now I think they are so far from having proved that the Bishops *did* publish it, that on the contrary, they have proved that their Lordships did *not* publish it. The Evidence they have offer'd for this matter is a Confession. This Confession is testified by Mr. *Black-mayt*, and he says the Bishops were ask'd at the Council whether they did subscribe and publish this Paper, and that their Answer was that they did *subscribe* but not *publish* it.

Now a Confession must be taken together, and must be admitted to be *entirely* true by them that produce it ; they shall never be allow'd to take out and use one *piece*, and wave the rest.

Why then by this Evidence of Confession, taken as it ought, it appears that the Bishops (tho' they did subscribe) did not *publish* the Paper. So that, I say, the King's Council have hereby plainly proved that the Bishops did *not* publish this Paper, and yet this is the only Evidence upon which they would infer that they *did* publish it.

Mr. Att. Gen. Look you, it does lie upon you, Gentlemen, to prove it was done elsewhere than in *Middlesex*.

Mr. Finch. Sure Mr. Attorney is in jest.

230 *The Tryal of the Seven Bishops.*

Mr. Att. Gen. No, I am in good earnest; all the Proof that we have given has been in *Middlesex*, and you can best tell whether you did it in *Middlesex* or no.

Mr. Finch. My Lord, we have done as to this Objection; for we say, they have not prov'd their Case.

L. Ch. Just. *Mr. Finch*, you may observe (and I am sure you do observe as well as any-body in all Cases) but, I say, you may observe that they are off of every thing but causing it to be publish'd; now that does lie upon the King's Council to prove, that my Lords the Bishops did cause it to be publish'd, for their owning of their Hands does not amount to a Publication.

Mr. Serj. Pemb. My Lord, We are upon this Point with them, Whether here be any Evidence of a Publication at all.

Mr. Just. Powell. Pray let us clear this first; for if there be no Publication, there can be no causing of it to be publish'd.

Mr. Att. Gen. My Lord, if you think fit, we shall go on and reserve this Point till afterwards.

Mr. Soll. Gen. They may make Objections, if they think fit.

L. Ch. Just. So they may; and they say, if these Objections are with us, we need go no farther.

Mr. Serj. Pemb. But, my Lord, if they be not with us, we have a Reserve to give a farther Answer to it, and to offer Evidence against the Evidence they have offer'd.

Mr. Soll. Gen. With all our Hearts, give in Evidence what you can.

Mr. Att. Gen. Then pray, my Lord, let us go on to answer this Objection.

L. Ch. Just. Pray do, Mr. Attorney.

Mr.

The Tryal of the Seven Bishops. 231

Mr. *Att. Gen.* My Lord, and Gentlemen of the Jury, I would first observe how far we have gone. That there was such a Paper written, is clear beyond all question, and written by my Lord Archbishop of *Canterbury*; and, that it was sign'd by the rest of the Bishops, but not in the County of *Middlesex*; and that this Paper was publish'd, is agreed on all hands.

Mr. *Just. Holloway.* No, they do not agree that.

Mr. *Att. Gen.* Do I say it was publish'd by them? but there was such a Paper publish'd.

Mr. *Serj. Pemb.* No, we say it was never publish'd at all.

L. Ch. Just. Pray, Brother *Pemberton*, be quiet: If Mr. Attorney in opening does say any thing that he ought not to say, I will correct him, as I would do any-body that does not open things right as they are proved: But pray don't you that are at the Bar interrupt one-another; it is unbecoming Men of your Profession to be chopping in and snapping at one-another——Go on, Mr. Attorney.

Mr. *Att. Gen.* I say, that the Paper is prov'd to be written and sign'd by my Lords the Bishops, that I take for granted, and that the Paper so sign'd and written is now publish'd to the World, is also evident; but the Question is, who it was done by, or who caused it to be done; we are reduc'd to that Question. Now, first, it is agreed on all hands, that if I send a Letter to a private Man containing scandalous things in it, tho' there is no Proof more, but that it was sent seal'd, and receiv'd by the Party, in that Case it was a fault punishable in the *Star-Chamber*, as a Crime; but now that this was receiv'd by the King, and written by them, there is no room for Doubt; for you hear it was produc'd by the King at the Council-board, and they ask'd upon it, if it were their Hands: That the King did receive

232 *The Tryal of the Seven Bishops.*

it, there's no room for question, or, that they did write it; but the question is, from whom the King had it: I am sure they must shew that some-body else did it, and unless they do shew that, I hope, there is no manner of question but it came from them, and they did it: Tho' no man living knew any thing of this matter, but whom they thought fit to communicate it to, yet still they putting the King upon the necessity of shewing this Power, in order to his obtaining Satisfaction for it, or else he must remain under the Indignity without Reparation, it ought to be put upon them to clear the Fact; for if he does not produce it, then must the King put up the highest Injury and Affront that perhaps a Man can give the King to his Face, by delivering a Libel into his own Hands: And if he does produce it, then say they, That is not our publication, we prove it to be your writing and signing, and we prove it to come from the Hand of the King against whom it was compos'd, for we say it is a Libel against His Majesty, his Government and Prerogative. If then all those Cases that have been cited be Law, then sure there never was a stronger Case in the World than this; and I hope the Law goes a little farther in the Case of the King than it does in the Case of a private Man. No Man must think by Policy to give private Wounds to the Government, and disparage the Administration of it, and then when he is call'd in question about it, says he, Pray prove I publish'd it, or else you shall not punish me for it. We prove you framed it and writ it and sign'd it; and we prove it came to the King's Hand, of whom it was compos'd, must we produce two Witnesses of the delivery of it to the King? Surely there will be no need of any thing of that.

Mr.

The Tryal of the Seven Bishops. 233

Mr. *Sol. Gen.* My Lord, we have reduc'd it now to a very narrow Question, for (as Mr. *Attorney* has said) my Lord, there is no doubt but that my Lords the *Bishops* are the Authors of this Paper; there is no doubt but they sign'd it; and there is no doubt but that their signing of it, tho' it were at *Lambeth* (as they say) is a publishing of it: But however, this is plain and manifest, That this Paper was publish'd; and, That this Paper was publish'd in *Middlesex*, is as plain too: Now then there is nothing left but this Question, Whether my Lords the Bishops, who framed the thing, who wrote the thing, who sign'd the thing, were not the Occasion or Cause of its publication, or privy or consenting to it? My Lord, I will reduce it to a very plain point, for we are upon a rational Question, before a rational Court and a rational Jury, Whether these Lords did all of 'em, in the County of *Surry*, consent to the publishing of this Paper in *Middlesex*, for it is publish'd in *Middlesex*, (that we see) and if they are guilty of that part of the Information, of causing it to be publish'd, now what do they say to it? Say they, It is agreed that it is publish'd in *Middlesex*, but it is not prov'd to be publish'd by us.

L. Ch. Just. No, they do not say so, they agree it was in *Middlesex*, but not publish'd.

Mr. *Just. Powell.* Mr. Solicitor, they do agree it was in *Middlesex*, but not publish'd to be sure, not by them.

L. C. Just. Mr. Solicitor, I'll tell you what they stand upon; they say, you ought to prove it to be deliver'd to the King by the *Bishops*, or some-body imploy'd by them; for upon that went the Resolution that was in *Williams's* Case, That he sent it to the King; but here is no-body that proves it was deli-

234 *The Tryal of the Seven Bishops.*

deliver'd to the King in this Case, so that how it came to the King *Non constat*.

Mr. *Sol. Gen.* There will be the Question between us, Whether this be not a Publication?

Sir *Robert Sawyer.* Pray, Mr. Solicitor, prove your Case before you argue it.

L. Ch. Just. First settle what the Case is, before it be either prov'd or argued.

Mr. *Sol. Gen.* My Lord, I'll put you the Case: Here does appear in *Middlesex* a Paper that is a Libel in itself, and this Libel is prov'd to be written and formed by these Persons; this Libel coming into *Middlesex*, the Question is, Whether they are privy to it? I say in point of presumption, it must come from them.

L. Ch. Just. I cannot suppose it, I cannot presume any thing.

Mr. *Soll. Gen.* My Lord, I speak of that which is a Common Presumption, a Natural Presumption, what we call a Violent Presumption, which is a legal Presumption, and has always been allow'd for Evidence: Now, whether there be not such a Presumption in our Case, as to induce your Lordship and the Jury to believe that it cannot be otherwise, or at least to put the Labour upon them to shew how it came out of their Studies, and how it came to the King's hands; for it is in their power to shew the Truth of this matter, how it was; if they do not, the Presumption will lie upon them. That the Paper came to the King, that is plain enough, and its coming to the King's hands is a plain Proof of a Publication in *Middlesex*: And who should bring it to the King but these Gentlemen in whose power it was? There's no Man undertakes to say he lost it, then what else is to be believ'd, but that it came from them? I speak of common Supposition and Belief, they may very well shew it if it were

The Tryal of the Seven Bishops. 235

were not so: All that we can say in it is, here is a Paper in *Middlesex*, this you agreed was once your Paper, and in your power, pray shew what became of it, it lies upon you to clear this Doubt.

Mr. Recorder. My Lord, there is but this Question in the Case; the Question is not, Whether the owning it be a Publication, but Whether here be any Evidence that they did deliver it to the King: Now if they did deliver it to the King, that will be agreed to me to be a Publication.

Mr. Just. Holloway. No doubt of it, if you can prove it.

Mr. Recorder. Pray Sir spare me; That they did it, you have this Evidence: First, That they were the Authors of this Paper by their own Confession: That this was in the County of *Middlesex*; and, That when they were ask'd concerning it, they own'd it to be their Hand-writing. Now whether you can in the least question, after all this, their delivering of it to the King, or that it came to the King's hands without their knowledg or consent, is that which lies before your Lordship for your Judgment.

L. C. Just. I will ask my Brothers their Opinion, but I must deal truly with you, I think it is not Evidence against my Lords the Bishops.

Mr. Just. Holloway. Truly I think you have fail'd in your Information, you have not prov'd any thing against my Lords the Bishops in the County of *Middlesex*, and therefore the Jury must find them Not guilty.

Mr. Att. Gen. I'll put you but one Case, my Lord: A Man has an Opportunity secretly to deliver a Libel into the King's Hands when no-body is by, and so there can be no Proof of the delivery.

Mr.

236 *The Tryal of the Seven Bishops.*

Mr. Just. *Powel.* 'Tis a dangerous thing, Mr. *Attorney*, on the other side, to convict People of Crimes without Proof.

Mr. *Att. Gen.* But shall a Man be permitted thus to affront the King, and there be no way to punish it?

L. Ch. Just. Yes, there will sure; but it will be a very strange thing if we should go and presume that these Lords did it, when there is no sort of Evidence of it; 'tis that which, I do assure you, I cannot do; we must proceed according to Evidence and forms and methods of Law: They may think what they will of me, but I always declare my Mind according to my Conscience.

Mr. Serj. *Trinder.* But as to that other Point, Whether their owning of it be a Publication, has not been particularly spoke to.

L. Ch. Just. Mr. Attorney, and Mr. Solicitor, if there were enough to raise Doubt in the Court, so as to leave it to the Jury, I would sum up the Evidence.

Mr. *Sol. Gen.* My Lord, we know it is with the Court, these Lords insisted upon it, that it was a great while in their hands, but it seems, as far as our Evidence has gone hitherto, their Confession went no farther than that it was their Paper, and we must not extend their Confession further than it was; but I think we shall offer a fair Evidence that they did deliver it in the County of *Middlesex*.

L. Ch. Just. Indeed, indeed you ought to have gone to this, Mr. Solicitor, before the Court gave their Opinions.

Mr. *Sol. Gen.* Pray call Mr. *Blathwayt* again.

[*Mr. Blathwayt call'd.*]

L. Ch. Just. Mr. Solicitor, unless you are sure that Mr. *Blathwayt* is a Witness to the Publication, 'tis but

The Tryal of the Seven Bishops. 237

but suspending the Courts time to no purpose to call him.

Mr. Sol. Gen. We are sure of nothing, my Lord, but we must make use of our Witnesses, according to our Instructions in our Briefs.

[*Then Mr. Blathwayt appear'd.*]

Mr. Att. Gen. Mr. *Blathwayt*, you were sworn before.

Mr. Blathw. Yes, Sir.

Mr. Att. Gen. You were present when this Paper was deliver'd by the King at the Council-board.

Mr. Blathw. Yes, I was so, Sir.

Mr. Att. Gen. Do you remember any thing of the Bishops acknowledging their delivery of it to the King?

Mr. Sol. Gen. Mr. *Blathwayt*, I would ask you, Was there any mention or discourse with my Lords the *Bishops*, how that Paper came into the King's Hands? Was there any mention of what it was done for, upon the account of Religion, or how?

Mr. Blathw. I don't remember any thing of that,
Mr. Solicitor.

[*At which there was a great laughter.*]

L. Ch. Just. Pray let us have no laughing, it is not decent; Can't all this be done quietly, without Noise? Pray, Mr. *Blathwayt*, let me ask you, Do you remember there was any Discourse how that Writing came into the King's Hands?

Mr. Blathw. I receiv'd it from the King's Hands, and I know it was presented to him by my Lords the *Bishops*.

L. Ch. Just. How do you know it was presented to the King?

Mr. Blathw. I heard the King say so several times.

Mr. Sol. Gen. Pray mind my Question, Sir: First I ask you, Who produced the Paper at the Council-Table?

Mr.

238 *The Tryal of the Seven Bishops.*

Mr. Blathw. The King.

Mr. Sol. Gen. What said the *Bishops* when that Paper was shew'd them?

Mr. Blathw. Then (as I remember) they were ask'd, Whether that was the Paper that they deliver'd to the King?

Mr. Sol. Gen. Then what said the *Bishops*?

Mr. Blathw. They at first scrupled to answer, and said, it might be made use of to their prejudice if they own'd it.

Mr. Att. Gen. Pray, *Mr. Blathwayt*, consider again; Was that the Question put to my Lords the *Bishops*, Whether *that* was the Paper that was presented by them to the King?

Mr. Blathw. I do think, to the best of my remembrance, that my Lord Chancellor did ask them to that purpose; I cannot speak to the very Words.

Mr. Sol. Gen. And upon this what Answer did they make?

Mr. Blathwayt. My Lords the *Bishops* scrupled to answer the first and second time, (as I told you before) but they did own it was the Petition that they presented to the King, to the best of my Remembrance.

Mr. Sol. Gen. Did the Archbishop do any thing to own it?

Mr. Blathwayt. Yes, both my Lord Archbishop of *Canterbury*, and the rest of the *Bishops* did own all the same thing.

Mr. Sol. Gen. Was this done at *Whitehall*?

Mr. Blathwayt. Yes, at the Council-Table.

L. Ch. Just. Pray recollect your self, and consider what you say; did they own that that was the Paper they delivered to the King?

Mr. Serj. Pemb. Pray, my Lord, give us leave to ask a Question to clear this Matter; was the Question put to them, Whether it was the Paper that they

The Tryal of the Seven Bishops. 239

they deliver'd, or whether it were their Hands that were to it?

Mr. *Blathwayt*. My Lord, I do not so exactly recollect the Words.

L. *Ch. Just.* But pray tell us, if you can, what the Question was?

Mr. *Blathwayt*. My Lord, I do not remember the very Words, but I think if Mr. Serjeant *Pemberton* be pleased to repeat his Question, I shall give him a satisfactory Answer, as well as I can.

Mr. Serj. *Pemb.* Sir, that which I ask you is this, Whether the Question that was put to my Lords the Bishops at that time was, Whether this was the Paper that they deliver'd to the King, or whether those were their Hands that was to it?

Mr. *Blathwayt*. My Lord, I did always think that it was a plain Case that that was the Paper that they delivered to the King, and my Lords the Bishops did never deny but that they gave it to the King, and I had it from the King's Hands.

L. *Ch. Just.* But we must know from you (if you can tell us) what the Question was that was put to my Lords the Bishops, where they asked, Whether those were their Hands that were to that Paper, or was it, Whether they delivered that Paper to the King?

Mr. *Blathwayt*. As to the first part, that they owned 'twas their Hands, that I am sure of; but as to the other, I do not remember what the Words were.

[*At which there was a great shout.*]

Mr. *Att. Gen.* Pray, Mr. *Blathwayt*, recollect yourself, you say the King produced it.

Mr. *Blathwayt*. Yes, Sir.

Mr. *Att. Gen.* Do you remember that the King asked them any Question upon the producing of it?

Mr.

240 *The Tryal of the Seven Bishops.*

Mr. Blathwayt. My Lord Chancellor asked them, if those were not their Hands to the Petition.

Mr. Sol. Gen. Was there any other Matter in Discourse, whether that was the Paper that was deliver'd by them to the King?

Mr. Blathwayt. I cannot so positively say, what were the Words that my Lord Chancellor used.

Mr. Serj. Levinz. Pray do not twist a Man so, Mr. Solicitor.

Mr. Sol. Gen. And you are not to untwist a Man neither, Mr. Serjeant.

Mr. Att. Gen. Do you remember that the King said any thing of the Paper being deliver'd to him?

Mr. Blathw. The King has said it several times, I believe I have heard him say it ten times at least.

Mr. Att. Gen. Did he say it at that time?

Mr. Blathwayt. I cannot positively say that he did, Sir.

Mr. Serj. Pemb. He cannot answer it, why will you press it?

Mr. Blathwait. My Lord, here is the Clerk of the Council that was then in waiting, he took minutes, and perhaps can remember more than I.

Mr. Sol. Gen. Here they cry he cannot answer it, as if they could tell what he can answer better than himself; pray, *Mr. Bridgman*, was there any Question to this purpose, either from my Lord Chancellor, or from the King, whether that was the Paper that was presented by my Lords the Bishops, or deliver'd by the King, for I see you are very nice as to Words, and you do very well; but, was there not a Question to that purpose.

M. Bridgm. Sir, I don't remember, for I speak to the best of my Remembrance in all this matter; I say, I do not remember that that Question was ask-

ed

The Tryal of the Seven Bishops. 241

ed in those very Words, but I do remember something was said to that purpose, but by whom I cannot particularly say.

Sir Rob. Sawyer. To what purpose?

Mr. Sol. Gen. It is very strange that they won't let the Witness speak, but are continually interrupting him.

Sir R. Sawyer. Mr. Solicitor, no-body interrupts him.

L. Ch. Just. Why do not I behave my self between you all as I ought to do? pray *Sir Robert Sawyer* sit down, you cannot be contented when the *Man* does you no harm.

Mr. Sol. Gen. Pray consider, did my Lords the Bishops say any thing? or, was there any Discourse concerning the Paper, whether it was deliver'd to the King or no?

Mr. Bridgm. Mr. Solicitor, I have told you as near as I can what I do remember; I know not by whom it was said, but that Question, or to that purpose, was asked, whether that was the Petition they delivered, but I do not remember whether the Question was directly asked or answered, there was something about it, and several Passages there were; but whether spoken by my Lord Chancellor, or who, I cannot remember.

Mr. Sol. Gen. You say there was that which sufficiently denoted a Question to that purpose, and they said nothing against it.

Mr. Bridgm. No, there was no Denial of it.

Mr. Sol. Gen. I see you do not remember the particular Words, nor do we desire it of you.

Mr. Bridgman. They did not deny it, nor confess it.

Mr. Sol. Gen. Then, in your Apprehension, did they own that they delivered that Paper to the King?

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L. Ch.

242 *The Tryal of the Seven Bishops.*

L. Ch. Just. You must not ask that, Mr. Solicitor, it is not a fair Question to ask him what he apprehended.

Mr. Sol. Gen. He said it before himself.

L. Ch. Just. But his Apprehensions are no Evidence, and it is a sort of a leading Question, which we must not allow of.

Mr. Sol. Gen. Then if your Lordship do not like it, I will not ask it, but I will ask him another Question.

L. Ch. Just. Ay, ten if you will, so they be fair ones.

Mr. Sol. Gen. Was it upon the first or second time of their being examined?

Mr. Bridgm. I cannot tell, it was not the first time, all of it, I believe; for at the first time my Lords the Bishops made some Scruple of answering or owning any thing, and whatsoever they owned, they said, they hoped it should not be made use of to their Prejudice: I remember no Reply that was made, nor any thing farther, only my Lord Chancellor said, they were not to capitulate with their Prince; but they were required to answer the Questions that were asked them.

Mr. Sol. Gen. What were those Questions?

Mr. Bridgm. I have told you already as well as I can remember.

Mr. Sol. Gen. But did you take it upon the main that they owned the Delivery of that Paper to the King?

Mr. Just. Powell. Mr. Solicitor, you have been told you are to ask no such Questions.

Sir Rob. Sawyer. Nor never was there such Wire-drawing of a Witness in this World before.

L. Ch. Just. Pray sit still, Sir Robert Sawyer, you are not to teach us what we are to do, Mr. Solicitor must ask Questions that are proper for him, and not such

The Tryal of the Seven Bishops. 243

such as these ; but the Court must correct him, and not you.

Mr. Sol. Gen. *Mr. Bridgman* is very cautious, and he is to be commended for it, but we would get the Truth out of him, if we could ; pray Sir, if you can remember, recollect your self, whether by any Question to that purpose it was believed that they did own the Delivery of the Paper to the King.

Mr. Bridgm. I told you, *Mr. Solicitor*, as to that at first, that I do not remember the very Words of the Question, but I believe there was no-body doubted that that was not the Paper.

Mr. Sol. Gen. You speak well in your way, but these Gentlemen are very unwilling you should tell your opinion.

L. Ch. Just. His opinion is no Evidence, therefore you must not ask any such Questions, *Mr. Solicitor*.

Mr. Bridgm. As soon as the Petition was delivered, within a few Hours after, I saw it, the King shewed it to several People, and he said, it was the Petition the Bishops had deliver'd, he took it into his own Custody, and afterwards commanded me to write a Copy of it, and there was no Copy made of it but that one, but notwithstanding that, I do remember I did see a Copy of the Petition within a Day or two after it was presented about the Town.

Mr. Sol. Gen. Pray how many Days was this before the Discourse in Council upon their Examination ?

Mr. Bridgm. How many Days was what, Sir ?

Mr. Sol. Gen. When the King gave the Paper to be copied.

Mr. Bridgm. It was upon the Sunday.

244 *The Tryal of the Seven Bishops.*

Mr. Sol. Gen. But you say (as you believe) it was in a few Hours after the Paper was delivered to the King, that you did see it.

Mr. Justice Powel. But, what makes him say that this was delivered to the King but only hear-say?

L. Ch. Just. Pray, Mr. Solicitor, will you produce that which is Evidence, and not spend our time in that which is not.

Mr. Sol. Gen. My Lord, I would make no more of it than it is.

Mr. Serj. Levinz. 'Tis a shameful thing to offer such things in a Court of Justice.

Mr. Serj. Pemb. 'Tis a Practice that ought not to be endured.

L. Ch. Just. Pray, Brothers, be quiet, or I'll turn him loose upon you again, if you'll not be quiet; what is the matter? cannot you let us alone? we shall do every-body Right: Come, to shorten this matter, I'll ask you but this one Question, and that may satisfy any one that has honesty about him; Do you remember whether or no they were asked, if that was the Petition that they deliver'd to the King?

Mr. Bridgm. My Lord, I have answer'd that Question as directly as I can, I do not positively remember that that was the Question.

L. Ch. Just. Mr. Solicitor General, you must be satisfied when proper Questions are fairly answered, and therefore pray be quiet.

Mr. Att. Gen. However, we pray we may ask the rest of the Clerks of the Council, it may be they may remember more—— Sir *John Nicholas*, you were at the Council-Table that Day my Lords the Bishops were examined about this Paper.

Sir

ask

The Tryal of the Seven Bishops. 245

Sir *John Nicholas*. Yes, Sir, I was.

Mr. Att.Gen. Pray did you observe that the King produc'd the Petition?

Sir *John Nicholas*. No, indeed I did not see it.

Mr. Att.Gen. Did you observe any thing that pass'd there in Discourse?

Mr. Sol. Gen. Did you observe any Questions that were ask'd the Bishops, either by the King, or by my Lord Chancellor?

Sir *John Nich.* I think my Lord Chancellor did ask them if that was their Hands to the Petition, and they own'd it.

Mr. Sol. Gen. Do you remember whether they own'd, that they deliver'd that Paper to the King?

L. Ch. Just. I'll ask you, Sir *John Nicholas*, did my Lord Chancellor ask them this Question, Is this the Petition you deliver'd to the King?

Sir *John Nich.* I do not remember that.

[*Then there was a great Shout.*]

Mr. Sol. Gen. Here's wonderful great rejoicing that Truth cannot prevail.

Mr. S. Pembert. No, Mr. Solicitor, Truth does prevail.

Mr. Sol. Gen. You are all very glad that Truth is stifled, Mr. Serjeant.

Mr. S. Trinder. Pray, Sir *John Nicholas*, let me ask you one Question: Was there any Discourse about delivering that Petition to the King?

Sir *John Nicholas*. Indeed I do not remember it.

Mr. Sol. Gen. There is Mr. *Pepy's*, we'll examine him.

[*Mr. Pepy's sworn.*]

L. Ch. Just. Come, I'll ask the Questions: Were you bye at the Council-board when my Lords the Bishops were committed?

Mr. Pepy's. Yes, I was.

L. Ch. Just. What were the Questions that were ask'd either by the King or by my Lord Chancellor?

246 *The Tryal of the Seven Bishops.*

Mr. Pepy's. My Lord, I would remember as well as I could the very Words; and the very Words of the Question were, I think, *My Lords, do you own this Paper?* I do not remember any thing was spoken about the delivering, but I believe it was understood by every body at the Table, that that was the Paper that they had deliver'd.

L. Ch. Just. Well, have you done now? But to satisfy you, I'll ask this Question; Was this Question ask'd, *My Lords, was this the Paper you deliver'd to the King?*

Mr. Pepy's. No, my Lord.

Mr. Att. Gen. Pray Sir, do you remember whether the King himself ask'd the Question?

Mr. Pepy's. You mean, I suppose Mr. Attorney, that these were the Words, or something that imported their delivering it to the King.

Mr. Att. Gen. Yes, Sir.

Mr. Pep. Truly I remember nothing of that.

Mr. Sol. Gen. Did you observe any Discourse concerning their delivery of it to the King?

Mr. Pep. Indeed, *Mr. Solicitor*, I did not.

Mr. Att. Gen. Swear *Mr. Musgrave*.

[*Mr. Musgrave sworn.*]

L. Ch. Just. You hear the Question, Sir, what say you to it?

Mr. Musg. My Lord, I will give as short an account of it as I can: The first time after His Majesty had produc'd the Petition, and it was read at the Board, his Grace my Lord Archbishop of *Canterbury* and the other six Reverend Lords Bishops were called in, and it were ask'd of them, if they owned that, or if it was their Hands; my Lord Archbishop in the name of the rest did decline answering, upon the account that they were there as Criminals, and were not oblig'd to say any thing to their own prejudice, or that might hurt them hereafter; but if

His

His Majesty would command them, and if he would promise that no advantage should be made of whatsoever they confess'd, then they would answer the Question: His Majesty made no Answer to that, but only said, He would do nothing but what was according to Law: Whereupon the Bishops were order'd to withdraw; and being call'd in a second time, the Petition was shewn to them, and they were ask'd if they did own it, or if it was their Hands, and I think my Lord Archbishop did say then, We will rely upon your Majesty, or some such general thing was said, and then they did all own it that it was their Hands; I cannot say the Petition was read to them.

Mr. Just. Pow. Mr. *Blathwayt* (as I remember) it was the third time.

Mr. Musgrave. It was the second time (to the best of my remembrance.)

L. Ch. Just. Pray, Sir, was there any Question to this purpose? Is this the Paper you deliver'd to the King?

Mr. Musg. I do not remember that ever any such direct *Question* was ask'd.

Mr. Just. Allybone. But (as my Brother *Pemberton* did very well before distinguish) there is a great deal of difference between the owning the Subscription of a Paper, and between the owning of that Paper; Mr. *Pepy's* did say that they did own the Paper, and upon my word that will look very like a Publication.

Mr. Musg. I remember, my Lord, there was at the same time a *Question* ask'd, because several Copies had gone about the Town, Whether they had publish'd it; and my Lord Archbishop did say, He had been so cautious that he had not admitted his own Secretary, but writ it all himself; and the rest

248 *The Tryal of the Seven Bishops.*

of the Bishops did say, They did not publish it, nor never gave any Copies of it.

Mr. Att. Gen. My Lord (I confess) now it is to be left to the Jury upon this point, whether there not being a positive Witness that was by when the thing was done, yet upon this Evidence the Jury can't find any otherwise, than that the thing was done; truly I think we must leave it as a strong Case for the King. I could have wish'd indeed, for the satisfaction of every body, the Proof would have come up to that, but we must make it as strong for the King upon the Evidence given as it will bear. Now my Lord, take all this whole matter together; here is a Paper compos'd, framed, and written by seven learned Men, and this must be written by such Persons sure for some purpose; 'tis directed as a Petition to the King, and this Petition did come to the hands of the King, (for the King produces it in Council) and my Lord Archbishop and the rest of the Bishops own'd their Hands to it; then the Question is, my Lord, Whether or no there be any room for any-body living to doubt in this Case that this was not deliver'd by my Lords the Bishops to the King, tho' it be not a conclusive Evidence of a positive Fact, yet unless they shew something on the other side that may give way for a Supposition to the contrary, that it came out of their hands by surprise, or that any-body else deliver'd it to the King without their knowledge or consent, here must needs be a very violent presumption that they did do it: And when nothing of that is said on their side, can any Jury upon their Consciences say that it was not publish'd by them? And it being found in *Middlesex*, tho' it might be written and compos'd in *Surrey*, yet surely we have given a convincing Evidence, that either they publish'd or caused it to publish'd in *Middlesex*.

Pray

The Tryal of the Seven Bishops. 249

Pray call Mr. *Grayham*.

Cryer. He is gone out of the Hall.

Mr. Sol. Gen. My Lord, there is in Law a Presumption that is Evidence, tho' there be no positive Proof.

Sir Rob. Sawyer. But not in an Information for a Libel.

Mr. Sol. Gen. This is a meer Question of Fact, there is no difficulty in the Law of it all; for 'tis plain, if these Lords, or any of them, did consent and agree to the publishing of this Paper in *Middlesex*, they are guilty of this Information; and whether they are guilty or not guilty, we do rely upon the Circumstances proved, which are very violent; first, That they were the Men that contriv'd and set their Hands to it, and so were the Authors of it, is undeniable, for they have own'd it; Men of their Learning and Parts never did any such thing in vain: and then, That they were concern'd in the publishing of it in *Middlesex*, we offer for Proof that which was said by Mr. *Pepys*'s and Mr. *Blathwayt*, who tho' they do not come directly and expressly to the formal Words of such a *Question*, yet they tell you, especially Mr. *Blathwayt*, that they did apprehend it, and it was the Collection of all their Thoughts, and they took it for granted, as a thing that every body was satisfied in, that they did deliver that Paper to the King. I must confess, and agree, there is no Proof of the delivery of it by my Lords the Bishops to the King, but we know very well, that it is no wonder, when a Paper is libellous, that Men should use all the Skill they can to publish it with Impunity; and this is a thing that was done after some time of premeditation and serious consultation, for it was some Days after the Order for reading the Declaration was publish'd that this was framed and deliver'd, and it concern'd them to be wary

wary (as it seems they have been); but take this altogether, my Lord, the Paper being found in the King's Hands, it is in these Persons Power, and it lies upon them to make it out plain, what became of this Paper, which once lay in their own Hands and Custody; they can give an Account of it, they can give Light unto it: If they do not, I shall submit to the Jury, whether this is not sufficient Evidence to Convict them, especially when being examined, they did not make that their Excuse, they never said, *This Paper indeed we signed, but we did not intend to publish it, we intended to stifle it*; that had been some Excuse: But for them to say now, they did not present it to the King, I must submit to the Jury, whether they will believe, upon this Evidence, that these Lords the Bishops did present it, or cause it to be presented to the King, then they are Guilty of this Matter: And I leave it to them and their Consciences, what they will think upon the whole.

Mr. Recorder. My Lord, if your Lordship please—

Lord Chief Justice. What, again? Well, go on, *Sir Barth. Shore*, if we must have a Speech——

Mr. Recorder. Nay, my Lord, I would not trespass upon your Lordship.

L. Ch. Just. Gentlemen of the Jury, here is an Information against my Lords the Bishops; I think I need not trouble my self to open all of it, because I see you are *Men* of Understanding, *Men* of great Diligence, and have taken Notes your selves, some of you; therefore I say only something of the Proof that is required in such a Case, and of the manner of the Proof that has been given in this Case, and then tell you my opinion in Point of Law. Here is an Information, brought by *Mr. Attorney General*, on Behalf of the King, against these Reverend Fathers of the Church, the Archbishop and the rest; and it is for publishing a Seditious Libel, under the

Pre-

The Tryal of the Seven Bishops. 251

Pretence of a Petition, in which are contained the Words that are seen. Gentlemen, the Information is long, it tells you, That the King, out of his Gracious Clemency to all his loving Subjects, and for other Considerations, had thought fit to publish a Declaration of Indulgence, that all His loving Subjects might have *Liberty of Conscience*, upon the Fourth of *April*, in the Third Year of His Reign; and that this was set forth by the King; and that the King of His farther Grace, about the Twenty-seventh of *April* then next following——

Mr. *Finch*. I humbly beg your Lordship's Favour.

L. *Ch. Just*. What say you, Mr. *Finch*?

Mr. *Finch*. I ask your Pardon for breaking in upon you when you are directing the Jury: I know I should not do it, but I hope you will not be angry with me for it.

L. *Ch. Just*. If I thought you did any Service to your Client, I should willingly hearken to you.

Mr. *Finch*. That which I humbly offer to your Lordship, is, only to remember your Lordship where we were.

L. *Ch. Just*. Go on, Sir.

Mr. *Finch*. I would only say this, my Lord; the Question is, Whether this be Evidence, or no.

L. *Ch. Just*. I am sorry, Mr. *Finch*, you have that Opinion of me, as to think I should not leave it fairly to the Jury.

Mr. *Finch*. I only speak it, my Lord, because if it be Evidence, we have other Matter to offer in Answer to that Evidence, and in our own Defence.

L. *Ch. Just*. If you have more to offer, why did you conclude here, and let me begin to direct the Jury? but since you say you have other Matter to offer, we will hear it.

Mr. *Serj. Pemb*. My Lord, we submit to your Lordship's Direction.

L. *Ch*.

252 *The Tryal of the Seven Bishops.*

L. Ch. Just. No, no, you do not, you say you have further Matter to offer.

Mr. Pollixfen. My Lord, we shall rest it here.

L. Ch. Just. No, no, I will hear *Mr. Finch*: Go on, my Lords the Bishops shall not say of me, that I would not hear their Council; I have already been told of being Council against them, and they shall never say that I would not hear their Council for them.

Mr. S. Levinz. My Lord, we beseech your Lordship go on with your Directions; for all that *Mr. Finch* said, was only that this was not sufficient Evidence.

L. Ch. Just. No, Brother, he says you have a great deal more to offer, and I will not refuse to hear him; the Court will think there was something more than ordinary, therefore I will hear him, such a Learned Man as he shall not be refused to be heard by me, I'll assure you: Why don't you go on, *Mr. Finch*?

Mr. Finch. My Lord, I beg your Pardon for interrupting you; but all that I was going to say, would have amounted to no more than this, That there being no Evidence against us, we must of course be acquitted.

Mr. Justice Holloway. My Lord did intend to have said as much as that, I dare say.

L. Ch. Just. Well, Gentlemen of the Jury, we have had Interruption enough——

Mr. Soll. Gen. My Lord, I must beg your Pardon for interrupting you now; and I am very glad these Gentlemen have given us this occasion, because we shall now be able to clear this Point. There is a Fatality in some Causes, my Lord, and so there is in this, we must beg your Patience for a very little while, for we have Notice that a Person of very great Quality is coming, that will make it appear,
that

that they made their Addresses to him, that they might deliver it to the King.

L. Ch. Just. Well—— You see what comes of the Interruption, Gentlemen, now we must stay——

[—Then there was a Pause for near half an Hour.]

Mr. Attor. Gen. Pray, my Lord, put the Case that a Man writes a Libel in one County, and it is found in another, Is not he answerable, unless he can shew something that may satisfy the Jury how it came there?

Mr. Sol. Gen. Ought he not to give an Account what became of it?

L. Ch. Just. No: look you, Mr. Attorney, you must look to your Information, and then you will find the Case that you put does not come up to it: It is for Writing, Composing, and Publishing, and causing to be published, and all this is laid in *Middlesex*: Now you have proved none of all these things to be done in the County.

Mr. Attor. Gen. They did in *Middlesex* confess it was theirs.

L. Ch. Just. Ay, but the owning their Hands is not a Publication in *Middlesex*, and so I should have told the Jury.

Mr. Finch. I beg your Lordship's Pardon for interrupting you.

Mr. Att. Gen. But, my Lord, does it not put the Proof upon them, to prove how it came out of their Hands into the King's Hands.

L. Ch. Just. No, the Proof lies on your part.

Mr. Pollixfen. Pray, my Lord, give us your Favour to dismiss us and the Jury.

Mr. Sol. Gen. My Lord, your Witnesses will be here presently.

Mr.

254 *The Tryal of the Seven Bishops.*

Mr. *Attor. Gen.* Sure, my Lord, the Presumption is on our side.

Mr. *Justice Powel.* No, the Presumption is against you, for my Lord Archbishop lived in *Surry*, and, it is proved was not out of *Lambeth-House* since *Michaelmas*, till he came before the Council.

Mr. *Serj. Pemb.* Pray, good my Lord, we stand mightily uneasy here, and so do the Jury, pray dismiss us.

Lord *Ch. Just.* I cannot help it, it is your own Fault.

[——— *Then there was another great Pause.*]

L. *Ch. Just.* Sir *Barth. Shore*, now we have time to hear your Speech, if you will.

Mr. *Pollixfen.* My Lord, there is no Body come, nor I believe will come.

Mr. *Sol. Gen.* Yes, he will come presently, we have had a *Messenger* from him.

[*Call Mr. Graham.*]

Cryer. He is gone, and said he would come presently.

Mr. *Sol. Gen.* My Lord, he will bring our Witnesses with him.

[——— *Then there was another Pause.*]

Mr. *Serj. Pemb.* My Lord, this is very unusual to stay thus for Evidence.

L. *Ch. Just.* It is so, but I am sure you ought not to have any Favour ——— Mr. *Solicitor*, Are you assured that you shall have this Witness that you speak of ?

Mr. *Sol. Gen.* Yes, my Lord, he will be here presently.

L. *Ch. Just.* We have staid a great while already, and therefore it is fit that we should have some Oath made that he is coming.

Mr.

The Tryal of the Seven Bishops. 255

Mr. Sol. Gen. The Cryer tells you, that *Mr. Graham* did acquaint him, that he would return presently.

L. Ch. Just. Give him the Book.

Mr. Sol. Gen. Let your Left-hand give your Right-hand the Oath.

[*The Cryer sworn.*]

L. Ch. Just. By the Oath that you have taken, Did *Mr. Graham* tell you there was any further Witness coming in this Case?

Cryer. Yes, my Lord, he did; he went out of the Hall, and return'd when your Lordship was directing the Jury, and he ask'd me what the Court were upon; and I told him, you were directing the Jury; and then he said my Lord *Sunderland* was coming, but he would go and prevent him: And afterwards he return'd, and finding your Lordship did not go on to direct the Jury, he said, he would go again for my Lord *Sunderland*, whom he had sent away, and he is now gone for him, and he said he would bring him with him presently.

L. Ch. Just. Well then, we must stay till the Evidence for the King comes, for now there is Oath made that he is coming.

[*And after a considerable pause the Lord President came.*]

Mr. Att. Gen. My Lord, we must pray that my Lord President may be sworn in this Case, on behalf of the King.

[*The Lord President sworn.*]

Mr. Att. Gen. My Lord, with your Lordship's favour I would ask my Lord President a *Question*: Your Lordship remembers where we left this Cause, we have brought it to this point, That this Petition came to the King's hands: That it is a Petition written by my Lord Archbishop, and subscrib'd by the rest of my Lords the Bishops; but there is a Difficulty made, whether this Petition thus prepared

256 *The Tryal of the Seven Bishops.*

red and written was by them deliver'd to the *King*, and whether my Lords the Bishops were concern'd in the doing of it, and were privy or Parties to the Delivery. Now that which I would ask your Lordship, my Lord President, is, Whether they did make their Application to your Lordship to speak to the *King*.

Mr. Sol. Gen. Did they make their Application to your Lordship upon any account whatsoever?

L. President. My Lord, my Lord Bishop of *St. Asaph*, and my Lord Bishop of *Chichester*, came to my Office, and told me, they came in the Names of my Lord Archbishop of *Canterbury*, and four others of their Brethren and themselves, with a Petition, which they desir'd to deliver to His Majesty, and they did come to me to know which was the best way of doing it, and whether the *King* would give them leave to do it or not: They would have had me read their Petition, but I refus'd it, and said, I thought it did not at all belong to me; but I would let the *King* know their Desire, and bring them an Answer immediately what his Pleasure was in it; which I did: I acquainted the *King*, and he commanded me to let my Lords the *Bishops* know, they might come when they pleas'd: And I went back and told them so, upon which they went and fetch'd the rest of the *Bishops*; and when they came, immediately they went into the Bed-Chamber, and into another Room where the *King* was. This is that I know of the matter.

Mr. Sol. Gen. About what time was this, pray, my Lord?

L. Presid. I believe there could not be much time between my coming from the *King*, and their fetching their Brethren, and going in to the *King*.

Mr. Sol. Gen. They were with the *King* that Day.

L. Presid. Yes, they were.

Mr.

The Tryal of the Seven Bishops. 257

Mr. Sol. Gen. Was this before they appear'd in Council?

L. President. Yes, it was several Days before.

Mr. Sol. Gen. Then I think now, my Lord, the *Matter* is very plain.

Mr. Just. *Allybone*. Did they acquaint your Lordship that their Business was to deliver a Petition to the King?

L. President. Yes, they did.

Mr. Sol. Gen. And they would have had my Lord read it (he says.)

Mr. Att. Gen. And this was the same Day that they did go in to the King.

L. President. The very same Day, and I think the same Hour, for it could not be much longer.

L. Ch. Just. Now it is upon you truly, it will be presumed to be the same, unless that you prove that you deliver'd another—— Pray, my Lord, did you look into the Petition?

L. President. No, I refused it, I thought it did not concern me.

Mr. Justice *Powel*. Did you see them deliver it to the King, my Lord?

L. President. I was not in the Room when it was deliver'd.

Mr. Justice *Powel*. They did open their Petition to your Lordship, did they?

L. President. They offer'd me to read it, but I did refuse.

L. Ch. Just. Will you ask my Lord *President* any Question, you that are for the Defendants?

Sir *Rob. Sawyer*. No, my Lord.

Mr. Sol. Gen. Then, my Lord, we must beg one thing for the sake of the Jury, if your Lordship can turn your self a little this way, and deliver the Evidence you have given over again, that they may hear it.

258 *The Tryal of the Seven Bishops.*

L. President. My Lord, I will repeat it as near as I can, I think I shall not vary the Sense: The Bishops of *St. Asaph* and *Chichester* came to my Office, I do not know just the Day when, but it was to let me know, that they came in the Name of the Archbishop, and four other of their Brethren—— Is it necessary I should name them?

L. Ch. Just. Do it, my Lord, if you can.

L. President. They were the Bishops of *Ely*, *Bath* and *Wells*, *Bristol*, and *Peterborough*; they came to let me know, in the Name of the Archbishop, those four, and themselves, that they had a Petition to deliver to the King, if he would give them Leave; and desir'd to know of me which was the best way to do it. I told them I would know the King's Pleasure, and bring them word again: They offer'd me their Petition to read, but I did not think it fit for me to do it, and therefore I refused, and would not read it, but I went immediately to the King, and acquainted his Majesty with it, and he commanded me to let them know they might come when they would, which I immediately did; they said they would go and speak with some of their Brethren that were not far off; in the mean time I gave Order that they should be admitted when they came, and they did in a little time return, and went first into the Bed-Chamber, and then into the Room where the King was.

Mr. Sol. Gen. And this was before they came and appear'd at the Council?

L. President. Yes, it was.

Mr. Pollixfen. Your Lordship did not read any thing of the Petition.

L. President. No, Sir, I did not, I refused it.

Mr. Pollixfen. Nor does your Lordship know what Petition they did deliver to the King.

L. Pres.

The Tryal of the Seven Bishops. 259

L. President. I did not know any thing of it from them then.

L. Ch. Just. Now you may make your Observations upon this two Hours hence: Now we shall hear what *Mr. Finch* had further to offer, I suppose.

[*Then my Lord President went away.*]

Mr. Sol. Gen. I think now it is very plain.

L. Ch. Just. Truly, I must needs tell you, there was a great Presumption before, but there is a greater now, and I think I shall leave it with some Effect to the Jury, I cannot see but that here is enough to put the Proof upon you: They came to the Lord *President*, and asked him how they might deliver a Petition to the King; he told them he would go and see what the King said to it; they would have had him read their Petition, but he refused it; he comes and tells them the King said they might come when they would; then those two that came to my Lord *President* went and gathered up the other four (the Archbishop indeed was not there) but they Six came, and my Lord *President* gave Direction they should be let in, and they did go into the Room where the King was: now this, with the King's producing the Paper, and their owning it at the Council, is such a Proof to me, as I think will be Evidence to the Jury of the Publication.

Mr. Pollixfen. Then, my Lord, thus far they only can go, the Archbishop was not there, and so there is no Evidence against him.

Mr. Sol. Gen. As to the Writing, we have given Proof against him, for it is all his Hand.

Mr. Pollixfen. That still is in another County, and there is nothing prov'd to be done by my Lord Archbishop in *Middlesex*; and next, for the other Six Lords, my Lord *President* does not say that this is the Petition that they said they had to deliver to the King; nor did he see them deliver any thing to

260 *The Tryal of the Seven Bishops.*

the King, but that is left still doubtful, and under your Judgment, so that it stands upon Presumption, not upon Proof, that this is the same, and left under Consideration.

Mr. *Att. Gen.* Then we will leave it fairly to the Jury upon this Fact.

Mr. *Pollixfen.* If so, then we desire to be heard in our Defence.

Sir *Rob. Sawyer.* May it please your Lordship, and you Gentlemen of the Jury, you have heard this Charge which Mr. *Attorney* has been pleased to make against my Lords the Bishops, and that is this, That they did conspire to diminish the Royal Authority, and Regal Prerogative, Power, and Government of the King, and to avoid the Order of Council, and in prosecution of this, they did falsely, maliciously, and seditiously make a Libel against the King, under pretence of a Petition, and did publish the same in the King's Presence.

This, Gentlemen, is a very heinous and heavy Charge, but you see how short their Evidence is; the Evidence they bring forth is only, That my Lords the Bishops presented the Paper to the King in the most private and humble manner they could; that which they have been so many Hours proving, and which they cry up to be as strong an Evidence as ever was given, proves it to be the farthest from Sedition in the doing of it that can be; and you see what it is, it is a Petition to be reliev'd against an Order of Council which they conceive they were ag-griev'd by; they indeed do not deal fairly with the Court, nor with us, in that they do not set it forth that it was a Petition.

L. Ch. Just. That was over-ruled before.

Sir *Rob. Sawyer.* I do not insist upon it now so much an Exception to the Information, as I do to the Evidence; they set this forth to be a scandalous
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The Tryal of the Seven Bishops. 261

matter, but it only contains their Reasons whereby they would satisfy his Majesty why they cannot comply in a Concurrence with his Majesty's Pleasure; and therefore they humbly beseech the King, and beg and request him (as the words of it are) that his Majesty would be pleas'd not to insist upon their distributing and reading of this Declaration. So the Petitioners, on behalf of themselves and the whole Clergy of *England*, beg of the King that he would please not to insist upon it.

Gentlemen, you may observe it, that there is nothing in this Petition that contains any thing of Sedition in it, and it would be strange this Petition should be *Felo de se*, and by one part of it destroy the other: It is laid indeed in the Information, that it was with intent and purpose to diminish the *King's Royal Authority*, but I appeal to your Lordship, the Court, and the Jury, whether there be any one Word in it that any way touches the King's Prerogative, or any tittle of Evidence that has been given to make good the Charge; 'tis an Excuse barely for their Non-compliance with the King's Order, and a begging of the *King* with all Humility and Submission, that he would be pleas'd not to insist upon the reading of his Majesty's Declaration upon these grounds, because the Dispensing Power upon which it was founded had been several times in Parliament declar'd to be against Law, and because it was a Case of that consequence, that they could not in Prudence, Honour, or Conscience concur in it.

My Lord, Mr. *Attorney* has been pleas'd to charge in this Information, that this is a false, malicious, and seditious Libel: Both the falsity of it, and that it was malicious and seditious, are all matters of Fact, which with submission they have offer'd to

262 *The Tryal of the Seven Bishops.*

the Jury no Proof of; and I make no question but easily to demonstrate the quite contrary.

For, my Lord, I think it can be no Question, but that any Subject that is commanded by the *King* to do a Thing which he conceives to be against Law, and against his Conscience, may humbly apply himself to the *King*, and tell him the Reason why he does not that Thing he is commanded to do, why he cannot concur with his Majesty in such a Command.

My Lord, that which Mr. *Attorney* did insist upon in the beginning of this Day (and he pretended to cite some Cases for it) was, That in this Case my Lords the Bishops were not sued as Bishops, nor prosecuted for Religion: Truly, my Lord, I do not know what they are sued for else; the Information is against them as Bishops, it is for an Act they did as Bishops, and no otherwise; and for an Act they did and do conceive they lawfully might do with relation to their Ecclesiastical Polity, and the Government of their People as Bishops.

The next thing that Mr. *Attorney* offer'd was, That it was not for a Non-feasance, but for a Feasance. 'Tis true, my Lord, it is for a Feasance in making of the Petition, but it was to excuse a Non-feasance, the not reading according to the Order; and this sure was lawful for all the Bishops as Subjects to do, and I shall shew it was certainly the Duty of my Lords the Bishops, or any Peer of the Realm; to do the same in a like Case. It was likewise said, They were prosecuted here for affronting the Government, and intermeddling with matters of State; but I beg your Lordship and the Jury to consider, whether there is one tittle of this mention'd in the Petition, or any Evidence given of it: The Petition does not meddle with any thing of any
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matter of State, but refers to an Ecclesiastical matter, to be executed by the Clergy, and to a matter that has relation to Ecclesiastical Causes; so that they were not Busybodies, or such as meddled in matters that did not relate to them, but that which was properly within their Sphere and Jurisdiction.

But after all, there is no Evidence, nor any sort of Evidence that is given by Mr. *Attorney*, that will maintain the least tittle of this Charge; and how he comes to leave it upon this sort of Evidence I cannot tell; all that it amounts to is, That my Lords the Bishops being griev'd in this manner, made this Petition to the *King* in the most private and respectful manner; and for him to load it with such horrid black Epithets, That it was done *libellously*, *maliciously*, and *scandalously*, and to oppose the *King* and *Government*, is very hard: 'Tis a Case of a very extraordinary nature, and I believe my Lords the Bishops cannot but conceive a great deal of Trouble, that they should lie under so heavy a Charge, and that Mr. *Attorney* should draw so severe an Information against them, when he has so little Proof to make it out.

My Lord, by what we have to say to it, we hope, we shall give your Lordship and the Jury satisfaction, that we have done but our Duties, supposing here has been a sufficient Evidence of the Fact given, which we leave to your Lordship and the Jury.

My Lord, we say in short, That this Petition is no more than what any man, if he be commanded to do any thing, might humbly do, and not be guilty of any Crime: And, my Lord, as to the *Matter* of our Defence, it will consist of these Heads:

First, We shall consider the *Matter* of this Petition.

Secondly, The *Manner* of the delivering it, according as they have given Evidence here; and,

264 *The Tryal of the Seven Bishops.*

Thirdly, The *Persons* that have deliver'd this Petition. And we hope to make it appear beyond all question, That the *Matter* contain'd in this Petition is neither false nor contrary to Law, but agreeable to all the Laws of the Land in all Times. We shall likewise shew you (tho' that appear sufficiently to you already) That the *manner* of delivering it was so far from being seditious, that it was in the most secret and private manner, and with the greatest Humility and Duty imaginable. And then as to the *Persons* we shall shew you, that they are not such as Mr. *Attorney* says, who meddle with matters of State that are out of their sphere, but they are Persons concern'd, and concern'd in Interest in the Case, to make this humble Application to the *King*. And when we have prov'd all this matter, you will see how strangely we are blacken'd with Titles and Epithets which we no ways deserve, and of which, God be thanked, there is no Proof.

For, my Lord, for the *Matter* of the Petition we shall consider two things: The first is, the *Prayer*, which is this; "They humbly beg and desire of the
" King, on behalf of themselves and the rest of the
" Clergy, that he would not insist upon the Reading
" and Publishing of this Declaration.

Surely, my Lord, there is nothing of Falsity in this, nor any thing that is contrary to Law, or unlawful for any man that is press'd to any thing, especially, by an Order of Council; and this nothing but a Petition against an Order of Council; and if there be an Order that commands my Lords the Bishops to do a thing that seems grievous to them, surely they may beg of the King that he would not insist upon it.

And for this *Matter*, they were so well satisfied about it, and so far from thinking that it was any part of a Libel, that they left it out of the Information,

tion, and so have made a deform'd and absurd Story of it, without Head or Tail, a Petition directed to no-body, and for nothing, it being without both *Title* and *Prayer* : So that this is plain, it was lawful to petition.

Then, my Lord, the next thing is, the Reasons which my Lords the Bishops come to acquaint the King with, why, in Honour and Conscience, they cannot comply with, and give Obedience to this Order; and the Reasons, my Lord, are two.

The first Reason that is assign'd, is, the several Declarations that have been in Parliament, (several of which are mention'd) That such a Power to dispense with the Law is against Law; and, that it could not be done but by an Act of Parliament, for that is the meaning of the Word *Illegal*, that has no other signification but *unlawful*, the same in point of signification with the Word *Illicite*, which they have used in their Information, a thing that cannot be done by Law; and this they are pleas'd to tell the King, not as declaring their own Judgments, but what has been declar'd in Parliament; tho' if they had done the former, they being Peers of the Realm and Bishops of the Church, are bound to understand the Laws, especially when (as I shall come to show you) they are made Guardians of these Laws; and if any thing go amiss, and contrary to these Laws, they ought to inform the King of it.

My Lord, the next thing is, Because 'tis a Thing of so great moment, and the Consequences that will arise from their publishing of this Declaration, and that too, my Lord, (for the latter I shall begin first with) there can be no Question about, or any Pretence that this is libellous or false; for certainly it is a Case of the greatest Consequence to the whole Nation that ever was, therefore it cannot be false or libellous to say so.

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266 *The Tryal of the Seven Bishops.*

My Lord, I would not mention this, for I am loth to touch upon things of this nature, had not the Information itself made it the very *Gift* of the Charge; for the Information (if there be any thing in it) says, That it was to diminish the King's Prerogative and Regal Power in publishing that Declaration.

Now, my Lord, what the Consequence of this would be, and what my Lords the Bishops meant by saying *it was a Cause of great moment*, will appear by considering that which is the main Clause in the Declaration, at which my Lords the *Bishops* scrupled, which is the main Stumbling-block to my Lords, and has been to many honest Men besides, and that is this:

We do likewise declare, It is our Royal Will and Pleasure, that from henceforth the Execution of all and all manner of Penal Laws in Matters Ecclesiastical, for not coming to Church, or not receiving the Sacrament, or for any other Nonconformity to the Religion established, or for or by reason of the Exercise of Religion in any manner whatsoever, be immediately suspended; and the further Execution of the said Penal Laws, and every of them, is hereby suspended.

Now, my Lord, this Clause either is of some legal Effect and Signification, or it is not. If Mr. *Attorney* or the King's Council do say it is of no Effect in Law, then there's no harm done; then this Petition does no ways impeach the King's Prerogative, in saying, it has been declar'd in Parliament according as the

[*Here the Lord Chief-Justice speaking aside, said,*]

L. Ch. Just. I must not suffer this, they intend to dispute the King's Power of suspending Laws.

Mr. J. Powel. My Lord, they must necessarily fall upon that Point; for if the King hath no such Power, (as clearly he hath not in my Judgment) the natural Consequence will be, that this Petition is no diminution of the King's Regal Power, and so not seditious or libellous.

L. Ch. Just. Brother, I know you are full of that Doctrine; but

the King's Council do agree the Law to be.

But, my Lord, if it have any Effect in Law, and these Laws are suspended by virtue of this Clause in the Declaration, then certainly, my Lord, it is of the most dismal consequence that can be thought of, and it behoved my Lords, who are the Fathers of the Church, humbly to represent it to the King.

For, my Lord, by this Declaration, and particularly by that Clause in it, not only the Laws of our Reformation, but all the Laws for the preservation of the Christian Religion in general are suspended, and become of no force: If there be such an Effect in Law wrought by this Declaration as is pretended, (that is) that the Obligation of Obedience to them ceaseth, the Reason of it is plain, the Words cannot admit of such a Quibble as to pretend that the Execution of the Law is not the Suspending of the Law, and that the Suspending the Execution of the Law, is not a Suspending of the Law; for we all know the Execution of every Law in its primary intent, is Obedience to it, that of the *Penalty* comes in by way of Punishment and Recompence for their Disobedience.

Now, my Lord, if this Declaration does discharge the King's Subjects from their Obedience to, and the Obligation from, those Laws, then pray, my Lord, where are we? Then all the Laws of the Reformation are suspended, and the Laws of Christianity itself, by those latter words, [*or for, or by reason of Religion in any manner whatsoever*] so that it is not confined to the Christian Religion, but all other Religions are permitted under this Clause: And thus

but however my Lords the Bishops shall have no occasion to say, that I deny to hear their Council. Brother, you shall have your Will for once, I will hear them, let them talk till they are weary.

Mr. Just. *Powel*. I desire no greater Liberty to be granted them than what in Justice the Court ought to grant, that is, to hear them in defence of their Clients.

268 *The Tryal of the Seven Bishops.*

thus all our Laws for keeping the Sabbath, and which distinguish us from Heathens, will be suspended too.

My Lord, this is such an Inconvenience as (I think) I need name no more ; and it is a very natural Consequence from that Clause of the Declaration, it discharges at once all Ministers and Clergymen from performing their Duty in reading the Service of the Church, and discharges their Hearers from attending upon that Service.

When a Law is suspended, the Obligation thereof is taken away ; and those that before thought themselves bound to obey, now conclude they are not so obliged : And what a Mischief that will be to the Church, which is under the care of my Lords the Bishops, your Lordship will easily apprehend.

These things, my Lord, I only mention to shew the great and evil Consequences that apparently follow upon such a Declaration, which made my Lords the Bishops decline obeying the Order, and put them under a necessity of applying thus to the King, to acquaint him with the Reasons why they could not comply with his Commands, to read this Declaration to the People, because the Consequences thereof were so great, it tending naturally to lead the People into so great an Error, as to believe those Laws were not in force, when in Truth and Reality they are still in force, and continue to oblige them.

And that being the second Reason in this Petition, I come next to consider it, to wit, That the Parliament had oftendecar'd this pretended Power to be illegal ; and for that we shall read the several Records in Parliament mention'd in their Petition, and produce several ancient Records of former Parliaments that prove this Point, and particularly in the Time of *Richard* the Second, concerning

The Tryal of the Seven Bishops. 269

ing the Statute of *Provisors*, where there were particular Dispensations for that Statute; the King was enabled to do it by Act of Parliament, and could not do it without.

L. Ch. Just. Pray, Sir Robert Sawyer, go to your Proofs, and reserve your Arguments till afterwards.

Sir Rob. Sawyer. My Lord, I do but shortly mention these things; so that, my Lord, as to the *Matter* of this Petition, we shall shew you, that it is true and agreeable to the Laws of the Land.

Then, my Lord, as to the *Manner* of delivering it, I need say no more, but that it is plain from their Evidence, that it was in the most private and humble manner. And, as my Lord President said, Leave was askt of the King for them to be admitted to present it; Leave was given, and accordingly they did it.

We come then, my Lord, to the third thing, the *Persons*, these noble Lords; and we shall shew, they are not Busybodies, but in this matter have done their Duty, and meddled with their own Affairs: That, my Lord, will appear,

First, by the general Care that is repos'd in them by the *Law* of the Land. They are frequently in our Books call'd *The King's Spiritual Judges*; they are entrusted with the Care of Souls, and the Superintendency over all the Clergy is *their* principal Care.

But, besides this, my Lord, there is another special Care put upon them, by the express Words of an Act of Parliament; for, over and above the general Care of the Church, by vertue of their Offices as Bishops, the Act of 1 *Eliz.* cap. 2. makes them Special Guardians of the *Law of Uniformity*, and of that other Law in his late Majesty's Reign, where all the Clauses of that Statute of 1 *Eliz.* are revived, and made applicable to the present State of the Church of *England*. Now in that Statute of 1 *Eliz.* there is this Clause.

— And

— And for the due Execution hereof, the Queen's Most Excellent Majesty, the Lords Spiritual and Temporal, and all the Commons in this present Parliament assembled, do, in God's Name, earnestly require and charge all the Archbishops, and Bishops, and other Ordinaries, that they do endeavour themselves, to the utmost of their Knowledges, that the due and true Execution hereof may be had throughout their Diocesses and Charges, as they will answer before God, for such Evils and Plagues, wherewith Almighty God may justly punish His People, for neglecting this good and wholesome Law.

This is the Charge that lies upon the Bishops, to take Care of the Execution of that Law; and I shall pray by and by, that it may be read to the Jury.

Mr. Sol. Gen. That is very well, indeed! To what purpose?

Sir Rob. Sawyer. So that, my Lord, by this Law it is plain, that my Lords the Bishops, upon pain of bringing upon themselves the Imprecation of this Act of Parliament, are oblig'd to see it executed; and then, my Lord, when any thing comes under their Knowledge, especially if they are to be Actors in it, that has such a tendency to destroy the very Foundations of the Church, as the Suspension of all the Laws that relate to the Church must do, it concerns them that have no other Remedy to address the King, by Petition, about it.

For that, *Mr. Attorney*, my Lord has agreed, That if a proper Remedy be pursued in a proper Court, for a Grievance complained of, though there

may

The Tryal of the Seven Bishops. 271

may be many Words that else would be scandalous, yet, being in a regular Course, they are no Scandal. And so it is said in *Lake's Case*, in my Lord *Hobbart*.

My Lord, we must appeal to the King, or we can appeal to no-body, to be relieved against an Order of Council, with which we are aggrieved; and it is our Duty so to do, according to the Care that the Law hath placed in us.

Besides, my Lord, the Bishops were commanded by this Order, to do an Act relating to their Ecclesiastical Function, to distribute it to be read by their Clergy: And how could they in Conscience do it, when they thought part of the Declaration was not according to Law?

Pray, my Lord, What has been the Reason of his Majesty's consulting of his Judges? And if his Majesty, or any the great Officers, by his Command, are about to do any thing that is contrary to Law, was it ever yet an Offence to tell the King so? I always look'd upon it as the Duty of an Officer or Magistrate, to tell the King what is Law, and what is not Law.

In *Cavendish's Case*, in the Queen's time, there was an Office granted of the Return of the Writs of *Supersedeas* in the Court of *Common-Pleas*; and he comes to the Court, and desires to be put into the Possession of the Office: The Court told him, They could do nothing in it, but he must bring his Assize. He applies to the Queen, and she sends; under the Privy Seal, a Command to sequester the Profits, and to take Security to answer the Profits, as the Judgment of the Law should go: But the Judges there return an Answer, That it was against Law, and they could not do it. Then there comes a second Letter, reciting the former, and commanding their Obedience: The Judges returned for Answer, They were

272 *The Tryal of the Seven Bishops.*

were upon their Oaths, and were sworn to keep the Laws, and would not do it.

My Lord, The like was done in the time of my Lord *Hobart*: We have it reported in *Anderson*, in a Case where a Prohibition had gone: There came a Message from Court, that a Consultation should be granted; and that was a Matter wherein there were various Opinions, whether it was *Ex Necessitate*, or Discretionary, but there they return'd, That it was against Law for any such Message to be sent.

Now here, my Lord, is a Case full as strong: My Lords the Bishops were commanded to do an Act, which they conceived to be against Law, and they decline it, and tell the King the Reason; and they have done it in the most humble manner that could be, by way of Petition. If they had done (as the Civil Law terms it) *Rescribere* generally, that had been lawful; but here they have done it in a more respectful manner, by an humble Petition. If they had said the Law was otherwise, that sure had been no Fault; but they do not so much as that, but they only say, it was so declared in Parliament; and they declare it with all Humility and Dutifulness. So that, my Lord, if we consider the Persons of the Defendants, they have not acted as Busybodies; and therefore, as this Case is, when we have given our Evidence, here will be an Answer to all the Implications of Law that are contained in this Information: For they would have this Petition work by Implication of Law, to make a Libel of it; but, by what I have said, it will appear, there was nothing of Sedition, nothing of Malice, nothing of Scandal in it, nothing of the Salt, and Vinegar, and Pepper, that they have put into the Case. We shall prove the Matters that I have opened for our Defence, and then, I dare say, your Lordship and the Jury will be of Opinion, we have done nothing but our Duty.

Mr.

The Tryal of the Seven Bishops. 273

Mr. Finch. May it please your Lordship, and you Gentlemen of the Jury, This Information sets forth (as you may observe upon opening it) that the King having, by his Royal Prerogative, set forth his Declarations that have been read, and made an Order of Council for the Reading the said Declarations in the Churches, and that the Archbishop and Bishops should severally send them into their Diocesses, to be read; my Lords the Bishops, that are the Defendants, did consult and conspire together to diminish the Kingly Authority, and Royal Prerogative of the King, and his Power and Government in his Regal Prerogative, in setting forth his Declaration; and that, in prosecution of that Conspiracy, they did contrive (as it was laid in the Information) a malicious, seditious, scandalous, false, and feign'd Libel, under pretence of a Petition, and so set forth the Petition; and, that they publish'd the Petition in the Presence of the King.

To this Charge in the Information, *Not Guilty* being pleaded, the Evidence that hath been given for the King, I know, hath been observed by the Court and the Jury, and I know will be taken into Consideration, how far it does come up to the Proof of the Delivery of this Petition by my Lords the Bishops; for all that was said till my Lord *President* was pleas'd to come was no Evidence of any Delivery at all; and my Lord *President's* Evidence is, That they were going to deliver a Petition; but whether they did deliver it, or did it not, or what they did deliver, he does not know. This is all the Evidence that has been given for the King.

But supposing now, my Lord, that there were room to presume that they had deliver'd this Petition set forth in the Information, let us consider what the Question is between the King and my Lords the Bishops: The Question is, Whether they

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274 *The Tryal of the Seven Bishops.*

are Guilty of contriving to diminish the King's Regal Authority and Royal Prerogative, in his Power and Government, in setting forth this Declaration? Whether they are Guilty of the making and presenting a malicious, seditious, and scandalous Libel; and whether they have publish'd it, as it is said in the Information, in the King's Presence?

So that the Question is not now reduced to this, Whether this Paper, that is set forth in the Information, was deliver'd to the King by my Lords the Bishops; but whether they have made a malicious, seditious, and scandalous Libel, with an Intent to diminish the King's Royal Prerogative, and Kingly Authority? And then, if you, Gentlemen, should think that there is Evidence given sufficient to prove that my Lords the Bishops have deliver'd to the King that Paper which is set forth in the Information; yet, unless they have deliver'd a false, malicious, seditious, and scandalous Libel; unless they have publish'd it to stir up Sedition in the Kingdom; and unless they have contriv'd this by Conspiracy, to diminish the King's Royal Prerogative and Authority, and that Power that is said to be in the King, my Lords the Bishops are not Guilty of this Accusation.

There are in this Declaration several Clauses, which, upon reading of the Information, (I am sure) cannot but have been observ'd by you, Gentlemen of the Jury; and one special Clause hath been by the Council already open'd to you, and I shall not enlarge upon it.

My Lord, This Petition that is thus deliver'd to the King, if it be a Libel, a scandalous and seditious Libel (as the Information calls it) it must be so either for the Matter of the Petition, or for the Persons that deliver'd the Petition, or for the manner of their presenting and delivering it: But neither

The Tryal of the Seven Bishops. 275

ther for the Matter, nor for the Persons, nor for the manner of presenting it, is there any Endeavour to diminish the King's Royal Prerogative, nor to stir up Sedition, nor Reflection upon the King's true Royal and Kingly Authority.

The Petition does humbly set forth to his Majesty, that there having been such a Declaration, and such an Order of Council, they did humbly represent to his Majesty, that they were not averse to any thing commanded them in that Order, in respect to the just and due Obedience that they owed to the King, nor in respect of their want of a due tenderness to those Persons to whom the King had been pleas'd to shew his tenderness; but the Declaration being founded upon a Power of Dispensing, which had been declar'd illegal in Parliament several times, and particularly in the Years 1662, 72, and 85, they did humbly beseech his Majesty (they not being able to comply with his Command in that matter) that he would not insist upon it.

Now, my Lord, Where is the Contrivance to diminish the King's Regal Authority, and Royal Prerogative?

This is a Declaration founded upon a Power of Dispensing, which undertakes to suspend all Laws Ecclesiastical whatsoever, for not coming to Church, or not receiving the Sacrament, or any other Non-conformity to the Religion establish'd, or for, or by reason of the Exercise of Religion in any manner whatsoever; ordering, that the Execution of all those Laws be immediately suspended, and they are thereby declar'd to be suspended; as if the King had a Power to suspend at once all the Laws relating to the establish'd Religion, and all the Laws that were made for the Security of our Reformation. These are all-suspended by his Majesty's Declaration

276 *The Tryal of the Seven Bishops.*

(as it is said) in the Information, by vertue of his Royal Prerogative, and Power so to do.

Now, my Lord, I have always taken it, with Submission, that a Power to abrogate Laws is as much a part of the Legislature as a Power to make Laws: A Power to lay Laws asleep, and to suspend Laws, is equal to a Power of abrogating them; for they are no longer in Being, as Laws, while they are so laid asleep, or suspended: And to abrogate all at once, or to do it time after time, is the same thing; and both are equally parts of the Legislature.

My Lord, in all the Education that I have had, in all the small Knowledge of the Laws that I could attain to, I could never yet hear of, or learn, that the Constitution of this Government in *England* was otherwise than thus, That the whole Legislative Power is in the King, Lords and Commons; the King, and his two Houses of Parliament. But then, if this Declaration be founded upon a part of the Legislature, which must be by all Men acknowledged not to reside in the King alone, but in the King, Lords and Commons, it cannot be a legal and true Power or Prerogative.

This, my Lord, has been attempted, but in the last King's time; it never was pretended till then; and in that first Attempt it was so far from being acknowledged, that it was taken Notice of in Parliament, and declar'd against: So it was in the Years 1662 and 1672.

In the Year —62, where there was but the least Umbrage given of such a Dispensing Power, altho' the King had declar'd, in his Speech to the Parliament, that he wished he had such a Power, which his Declaration before seemed to assume; the Parliament was so jealous of this, that they immediately made Application to his Majesty, by an Address against the Declaration; and they give Reasons against

The Tryal of the Seven Bishops. 277

against it in their Address: One, in particular, was, *That the King could not dispense with those Laws without an Act of Parliament.*

There was another Attempt in 1672, and then after his Majesty had, in his Speech, mentioned his Declaration to them, the Parliament there again, (particularly the House of Commons) did humbly address to his Majesty; setting forth, that this could not be done by Law, without an Act of Parliament: And your Lordship, by and by, upon reading the Record, will be satisfied what was the Event of all this. His Majesty himself was so far pleas'd to concur with them in that Opinion, that he cancell'd his Declaration, tore off the Seal, and caused it to be made known to the House of Lords, by the Lord Chancellor, who, by his Majesty's Command, satisfied the House of it, that his Majesty had broken the Seal, and cancell'd the Declaration, with this further Declaration, which is enter'd into the Records of the House, *That it should never be drawn into Example or Consequence.*

My Lord, the Matter standing thus, in respect to the King's Prerogative, and the Declarations that had been made in Parliament, consider next, I beseech you, how far my Lords the Bishops were concerned in this Question, humbly to make their Application to the King.

My Lords the Bishops lying under a Command to publish this Declaration, it was their Duty, as Peers of the Realm, and Bishops of the Church of *England*, humbly to apply themselves to his Majesty, to make known their Reasons, why they could not obey that Command; and they do it with all Submission, and all Humility, representing to his Majesty what had been declar'd in Parliament; and it having been so declared, they could not comply with his Order, as apprehending that this Declaration was founded

278 *The Tryal of the Seven Bishops.*

upon that which the Parliament declar'd to be illegal ; and so his Majesty's Command to publish this Declaration, would not warrant them so to do. This they did as Peers ; and this they had a Right to do as Bishops ; humbly to advise the King.

For suppose, my Lord, (which is not to be supposed in every Case, nor do I suppose it in this, but suppose that there might be a King of *England* that should be mis-led ;) (I do not suppose that to be the Case now, I say, but I know it hath been the Case formerly) that the King should be environ'd with Counsellors that had given him evil Advice, it has been objected as a Crime against such evil Counsellors, that they would not permit and suffer the Great Men of the Kingdom to offer the King their Advice. How often do we say in *Westminster-Hall*, That the King is deceiv'd in his Grant ? There is scarce a Day in the Term but it is said in one Court or other ; but it was never yet thought an Offence to say so : And what more is there in this Case ?

My Lord, if the King was misinform'd, or under a Misapprehension of the Law, my Lords, as they are Peers, and as they are Bishops, are concern'd in it ; and if they humbly apply themselves to the King, and offer him their Advice, where is the Crime ?

My Lord, these noble Lords, the Defendants, had more than an ordinary Call to this ; for, besides the Duty of their Office and the Care of the Church, that was incumbent on them as Bishops, they were here to become Actors ; for they were, by that Order of Council, commanded themselves to publish it, and to distribute it to the several Ministers in their several Diocesses, with their Commands to read it : Therefore they had more than ordinary Reason to concern themselves in the matter.

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Next we are to consider, my Lord, in what *manner* this was done: They make their Application to the King by an humble Petition, with all the Decency and Respect that could be shewn, asking Leave first to approach his Person; and having Leave, they offer'd my Lord President the *Matter* of their Petition, that nothing might seem hard or disrespectful, or as if they intended any thing that was unfit to be avow'd. When they had taken all this Care in their Approach, begging Leave for it, they come secretly to the King in private, when he was all-alone, and there they humbly present this Petition to his Majesty. Now, how this can be call'd the Publication of a malicious and seditious Libel, when it was but the presenting of a Petition to the King alone; and how it can be said to be with an intent to stir up Sedition in the People against his Majesty, and to alienate the Hearts of his People from him, when it was in this private manner deliver'd to him himself only, truly I cannot apprehend.

My Lord, I hope nothing of this can be thought an Offence: If the Jury should think that there has been Evidence sufficient given, to prove that my Lords the Bishops did deliver this Paper to the King, yet that is not enough to make them guilty of this Information, unless this Paper be likewise found to be in diminution of the King's Royal Prerogative and Regal Authority, in dispensing with and suspending of all Laws without Act of Parliament: Unless it be found to be a Libel against the King, to tell him, That in Parliament it was so and so declar'd: And unless the presenting this by way of Petition (which is the Right of all People that apprehend themselves aggriev'd, to approach his Majesty by Petition) be a libelling of the King: And unless this humble Petition, in this manner

presented to the King in private, may be said to be a malicious and seditious Libel, with an Intent to stir up the People to Sedition: Unless all this can be found, there's no Man living can ever find my Lords the Bishops guilty upon this Information. Therefore, my Lord, we will go on and make out this Matter that we have open'd to your Lordship, if Mr. *Attorney* and Mr. *Solicitor* think fit to argue the Points that we have opened.

Mr. *Pollixfen*. Pray, my Lord, spare me a Word on the same Side. For the first Point, 'Tis a Point of Law, whether the *Matter* contain'd in this Petition be a Libel: The King's Council pretend it is so, because it says the Declaration is founded upon a Power the Parliament has declar'd to be illegal: But we say, that whatsoever the King is pleas'd to say in any Declaration of his, it is not the King's saying of it that makes it to be a Law. Now we say, This Declaration under the Great Seal is not agreeable to the Laws of the Land; and that for this Reason, Because it does, at one blow, set aside all the Law we have in *England*.

My Lord, if this be deny'd, we must a little debate this matter, for they are almost all *Penal Laws*; not only those before the Reformation, but since; upon which the whole Government, both in Church and State, does in a great measure depend.

Especially, my Lord, in Matters of Religion they are all *Penal Laws*; for, by the Act of Uniformity, which my Lords the Bishops are sworn to observe, and adjur'd by an express Clause in the Act, no Man is to preach unless he be Episcopally ordain'd; no Man is to preach without a License. If all this be set aside, I confess, then it will go very far into the whole Ecclesiastical Government. If this be deny'd, we are ready to argue that too.

L. Ch. Just. They are to do so still.

Mr.

Mr. *Pollixfen*. My Lord, I am sure the Consequence is otherwise, if this Declaration signifie any thing. And if it be the Will of the King, my Lord, the Will of the King is what the Law is: If so be the King's Will be not consonant to the Law, it is not obliging.

My Lord, the Cases that we have had of Dispen-sations are all so many strong Authorities against a general or particular Abrogation. My Lord, that is a Matter of *Law*, which if it fall out to be any way doubtful, it will be fit to have it debated and settled.

If they will say, that the *Penal Laws* in matters Ecclesiastical can be abrogated, or null'd, or made void *pro tempore*, or for life, without the meeting of the King and People in Parliament, I must confess they say a great thing, as 'tis a Point of great concern; but, I think, that will not be said: And all that has been ever said in any Case touching Dispen-sations, proves quite the contrary, and asserts what I affirm: For, why should any Man go about to argue, That the King may dispense with this or that particular *Law*, if at once he can dispense with all the *Law* by an undoubted Prerogative? This is a Point of *Law* which we insist upon, and are ready to argue with them; but we will go on with the rest of those things that we have offer'd: And first, we will read the Act of Uniformity made 1 *Eliz.* that Clause of it where they are so strictly charg'd to see to the Execution of that *Law*.

This Act, my Lord, by the Act of Uniformity made in the beginning of the late King's Reign, is reviv'd, with all the Clauses in it relating to this matter. If then this be a Duty incumbent on them, and their Oaths require it of them, and if they find that the Pleasure of the King, in his Declaration, is that

282 *The Tryal of the Seven Bishops.*

that which is not consonant to this *Law*, what can they do?

Can any thing be more humble, or done with a more Christian Mind, than by way of Petition to inform the *King* in the matter? For I never thought it, nor hath it ever (sure) been thought by any-body else, to be a Crime to petition the *King*: For the *King* may be mistaken in the *Law*, so our Books say; and we every day, in *Westminster-hall*, argue against the *King's* Grants, and say, He is deceiv'd in his Grants. 'Tis the great Benefit and Liberty which the *King* gives to his Subjects, to argue the *Legality* or *Illegality* of his Grants.

My Lord, when all this is done, to make this to be a *Libel* by putting in the words *Malicious, Seditious, Scandalous*, and *with an Intent to raise Sedition*, would be pretty hard. — My Lord, we pray that Clause of the Statute may be read.

Mr. *Sol. Gen.* What for?

Mr. *Pollixfen.* 'Tis a general *Law*, and therefore the Court will take notice of it; and we pray the Jury may hear it read.

Mr. *Sol. Gen.* I agree it to be as Mr. *Pollixfen* has opened; and I agree it to be as Sir *Robert Sawyer* has opened it.

Mr. *Serj. Pemb.* My Lord, we shall put it upon a short Point. My Lords the Bishops are here accused of a Crime of a very heinous nature as can be; they are here branded and stigmatiz'd by this Information as if they were seditious Libellers, when, my Lord, it will in truth fall out, that they have done no more than their Duty; their Duty to God, their Duty to the King, and their Duty to the Church.

For, in this Case, that which we humbly offer to your Lordship (and insist upon it as very plain) is
this:

The Tryal of the Seven Bishops. 283

this: That the Kings of *England* have no Power to suspend or dispense with the Laws and Statutes of the Kingdom that establish our Religion; that's it which we stand upon for our Defence: And we say, That such a Dispensing Power with Laws and Statutes is a thing that strikes at the very Foundation of all the Rights, Liberties, and Properties of the King's Subjects whatsoever. If the King may suspend the Laws of the Land which concern our Religion, I am sure there is no other Law but he may suspend: And if the King may suspend all the Laws of the Kingdom, what a Condition are all the Subjects in for their Lives, Liberties, and Properties! All at Mercy.

My Lord, the King's legal Prerogatives are as much for the Advantage of his Subjects as of himself, and no Man goes about to speak against them; but, under pretence of legal Prerogatives, to extend the Power of the King, to support a Prerogative that tends to the Destruction of all his Subjects, their *Religion* and *Liberties*, in that (I think) they do the King no Service who go about to do it.

But now we say, with your Lordship's Favour, that these Laws are the great Bulwark of the Reform'd Religion; they are, in truth, that which fence the Religion and Church of *England*, and we have no other Human Fence besides. They were made upon a Foresight of the Mischief that had and might come by false Religions in this Kingdom; and they were intended to defend the Nation against them, and to keep them out, particularly to keep out the *Romish Religion* (which is the very worst of all Religions) from prevailing among us; and that is the very Design of the Act for the Tests, which is entitul'd, *An Act to prevent Dangers that may happen from Popish Recusants.*

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284 *The Tryal of the Seven Bishops.*

My Lord, if this Declaration should take effect, what would be the End of it? All *Religions* are let in, let them be what they will, *Ranters, Quakers,* and the like; nay, even the *Roman Catholick Religion* (as they call it;) which was intended, by these Acts of Parliament, and by the Act of Uniformity, and several other Acts, to be kept out of this Nation, as a *Religion* no way tolerable, nor to be endur'd here.

If this Declaration take effect, that *Religion* will stand upon the same Terms with the *Protestant Religion*. Suspend those Laws, and that *Romish Religion* that was intended to be prohibited, and so much Care was taken, and so many Statutes made, to prohibit it, will come in; and all this Care, and all those Statutes go for nothing: This one Declaration sets them all out of doors, and then *that Religion* stands upon equal Terms with the *Establiſh'd Religion*.

My Lord, we say this farther, That my Lords the Bishops have the Care of the Church by their very Function and Offices, and are bound to take care to keep out all those false Religions that are prohibited, and design'd to be kept out by the Law. My Lords the Bishops finding this Declaration founded upon a meer pretended Power, that had been continually oppos'd and rejected in Parliament, could not comply with the *King's* Command to read it.

My Lord, such a Power to dispense with or suspend the *Laws* of a Nation cannot, with any shadow of Reason, be. It is not long since, that such a Power was ever pretended to by any but such as have the Legislative too; for 'tis plain, that such a Power must, at least, be equal to the Power that made the *Laws*. To dispense with a *Law*, must argue

The Tryal of the Seven Bishops. 285

gue a Power greater, or, at least, as great as that which made the *Law*.

My Lord, it has been often said in our Books, That where the *King's* Subjects are concern'd in Interest, the *King* cannot suspend or dispense with a particular *Law*: But, my Lord, how can the *King's* Subjects be more concern'd in Interest than when their Religion lies at stake? It has been resolv'd, upon the Statute of *Symony*, That where the Statute has disabled the Party to take, there the *King* could not enable him against that Act of Parliament; and, Shall it be said, that by his Dispensation he shall enable one to hold an Office who is disabled by the Test-Act?

My Lord, we say, The Course of *our Law* allows no such Dispensation as this Declaration pretends to: And he that is but meanly read in *our Law* must needs understand this, That the Kings of *England* cannot suspend *our Laws*; for that would be, to set aside the *Law* of the Kingdom: And then we might be clearly without any *Laws*, if the King should please to suspend 'em.

'Tis true, we say the last King *Charles* was prevail'd upon, by Misinformation, to make a Dispensation somewhat of the nature of this, tho' not so full an one, for that dispens'd only with some few Ceremonies, and Things of that nature; but the House of Commons (this taking Air) in 1662, represent this to the *King* by a Petition. And what is it that they do represent? That he, by his Dispensation, has undertaken to do that which nothing but an Act of Parliament can do; that is, the dispensing with *Penal Laws*; which is only to be done by Act of Parliament. And thereupon 'twas thought fit, upon the King's account, to bring in an Act for it, in some Cases.

My

286 *The Tryal of the Seven Bishops.*

My Lord, the King did then, in his Speech to the Parliament (which we use as a great Argument against this Dispensing Power) say this, *That, considering the Circumstances of the Nation, he could wish with all his Heart that he had such a Power, to dispense with some Laws, in some Particulars.* And thereupon there was a Bill, in order to an Act of Parliament, brought in, giving the King a Power to dispense; but, my Lord, with a great many Qualifications. Which shews plainly that it was taken by the Parliament, that He had no Power to dispense with the Laws of himself.

My Lord, afterwards, in 1672, the King was prevail'd upon again to grant another Dispensation, somewhat larger.—

L. Ch. Just. Brother *Pemberton*, I would not interrupt you, but we have heard of this over and over again already.

Mr. Serj. Pemb. Then since your Lordship is satisfied of these things, (as I presume you are, else I should have gone on) I have done, my Lord.

Mr. Serj. Levinz. But, my Lord, we shall go a little higher than that, and shew, that it has been all-along taken as the ancient Law of *England*, That such Dispensations ought to be by the King and the Parliament, and not by the King alone.

Mr. Sol. Gen. My Lord, if you will admit every one of the Council to Speech it, before they give their Evidence, when shall we come to an End of this Cause? We shall be here till midnight.

L. Ch. Just. They have no mind to have an end of the Cause, for they have kept it three hours longer than they need to have done.

Mr. S. Pemb. My Lord, this Case does require a great deal of Patience.

L. Ch. Just. It does so, Brother, and the Court has had a great deal of Patience; but we must not

The Tryal of the Seven Bishops. 287

not sit here only to hear Speeches.

Mr. Att. Gen. Now, after all their Speeches of two Hours long, let them read any thing, if they have it.

Sir R. Sawyer. We will begin with the Record of *Richard the Second* — Call *William Fisher*.

[*William Fisher, Clerk to Mr. Ince, sworn.*]

L. Ch. Just. What do you ask him?

Sir R. Sawyer. Shew him that Copy of the Record.

[*The Record was then shewn him.*]

L. Ch. Just. Where had you those, Sir?

Mr. Fisher. Among the Records in the *Tower*.

L. Ch. Just. Are they true Copies?

Mr. Fisher. Yes, my Lord.

L. C. Just. Did you examine them by the Record?

Mr. Fisher. Yes, my Lord.

Sir Rob. Sawyer. Then hand them in, put them in.

[*Clerk reads*]

Ex Rotulo Parlamenti de Anno Regni Regis Richardi Secundi XV. N^o 1. ——— My Lord, it is written in French, and I shall make but a bad Reading of it.

Sir Sam. Astrey. Where is the Man that examin'd it? ——— Do you understand *French*?

Mr. Fisher. Yes, my Lord.

Sir Rob. Sawyer. The Record is in another Hand than this; they may easily read it.

Mr. Soll. Gen. Who copy'd this Paper?

Mr. Fisher. I did examine it.

Mr. Soll. Gen. What did you examine it with?

Mr. Fisher. I look'd upon that Copy, and *Mr. Halstead* read the Record.

L. Ch. Just. Young-Man, read out.

[*Fisher*

288 *The Tryal of the Seven Bishops.*

[*Fisher reads.*]

Vendredy Lende maine del Almes qu'estoit le premier jour ———

Mr. *Soll. Gen.* Pray, tell us what it is you would have read.

Mr. *Serj. Levinz.* I'll tell you what it is, Mr. *Sollicitor*: 'Tis the Dispensation with the Statute of Provisors: And the Act of Parliament does give the King a Power to dispense till such a time.

Mr. *Sol. Gen.* Don't you think the King's Prerogative is affirm'd by many Acts of Parliament?

Mr. *Serj. Levinz.* If the King could dispense without an Act of Parliament, what need was there for the making of it?

Mr. *Soll. Gen.* Mr. *Serjeant*, we are not to argue with you about that yet.

L. Ch. Just. Read it in *English*, for the Jury to understand it.

Mr. *Fisher.* My Lord, I cannot undertake to read it so readily in *English*.

Mr. *Just. Powel.* Why don't you produce the Records that are mention'd in the Petition, those in King *Charles* the Second's time?

Mr. *Serj. Levinz.* We will produce our Records in Order of Time, as they are.

Sir *Sam. Astrey.* There is the Clerk of the Records of the *Tower*, Mr. *Halstead*, will read it very well in *French* or *English*.

Then Mr. *Halstead* was sworn to interpret the Records into *English* according to the best of his Skill and Knowledge; but not reading very readily ——— A true Copy of the Record in *English* follows, out of the Rolls of Parliament, in the 15th Year of King *Richard* the Second, *Numero Primo.*

Friday,

FRiday, the Morrow of All-Souls, which was the first Day of this Parliament, holden at Westminster, in the fifteenth Year of the Reign of Our Lord, King Richard the Second, after the Conquest: The Reverend Father in GOD, the Archbishop of York, Primate and Chancellor of England, by the King's Commandment, being present in Parliament, pronounced and declared, very nobly and wisely, the Cause of the Summons of this Parliament; And said, first, That the King would, that Holy Church principally, and afterwards the Lords Spiritual and Temporal, and also the Cities and Burroughs, should have and enjoy their Liberties and Franchises, as well as they had them, and enjoy'd them, in the Time of his Noble Progenitors, Kings of England; and also, in his own Time. And afterwards said, The Summons of this Parliament was principally for three Occasions: The first Occasion was, To ordain how the Peace and Quiet of the Land, which have heretofore been greatly blemished and disturbed, as well by Detraction and Maintenance, as otherwise, might be better holden and kept, and the Laws better executed, and the King's Commands better obey'd. The second Occasion was, To ordain and see how the Price of Wool, which is, beyond measure, lessened and impaired, might be better amended and inhaunced. And also, That in case the War should begin again, at the End of the present Truce, to wit, at the Assumption of our Lady next coming, to ordain and see, how and whereby the said War may be maintained at the least

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290 *The Tryal of the Seven Bishops.*

Charge of the People. And the third Occasion was, touching the Statutes of Provifors, To ordain and fee how our Holy Father might have that which to him belongs; and the King, that which belongs to him, and to his Crown; according unto that, Render unto Cæſar the Things that are Cæſar's, and unto GOD the Things which are GOD's.

Then the other Record, of *Richard the Second*, was read as follows, out of the Rolls of Parliament, in the fifteenth Year of King *Richard the Second* (N^o 8.)

BE it remember'd, touching the Statute of Provifors, That the Commons (for the great Confidence which they have in the Person of Our Lord the King, and in his moſt Excellent Knowledge, and in the great Tenderneſs which he hath for his Crown, and the Rights thereof; and alſo, in the noble and high Deſcretion of the Lords) have aſſented, in full Parliament, that our ſaid Lord the King, by Advice and Aſſent of the ſaid Lords, may make ſuch Sufferance touching the ſaid Statute, as ſhall ſeem to him reaſonable and profitable, until the next Parliament, ſo as the ſaid Statute be not repealed in no Article thereof: And that all thoſe who have any Benefices by force of the ſaid Statute, before this preſent Parliament; and alſo, That all thoſe, to whom any Aid, Tranquility, or Advantage is accrued, by vertue of the ſaid Statute, of the Benefices of Holy Church (of which they were heretofore in poſſeſſion) as well by Preſentation, or Collocation of our Lord the King, as of the Ordinaries,
or

The Tryal of the Seven Bishops. 291

or Religious Persons whatsoever, or by any other manner or way whatsoever; may freely have and enjoy them, and peaceably continue their Possession thereof, without being ousted thereof, or any ways challenged, hinder'd, molested, disquieted, or grieved hereafter, by any Provisors, or others, against the Form and Effect of the Statute aforesaid, by reason of the said Sufferance in any time to come. And moreover, That the said Commons may disagree, at the next Parliament, to this Sufferance, and fully resort to the said Statute, if it shall seem good to them to do it: With Protestation, That this Assent, which is a Novelty, and has not been done before this time, be not drawn into Example or Consequence for time to come. And they pray'd our Lord the King, that the Protestation might be enter'd of Record, in the Roll of the Parliament: And the King granted, and commanded to do it.

Mr. Serj. Levinz. Now, my Lord, we will go on. — This was in *Richard the Second's Time*: And a Power is given by the Commons, to the King, with the Assent of the Lords, to dispense, but only to the next Parliament, with a Power reserved to the Commons; and to disagree to it, and retract that Consent of theirs the next Parliament.

Sir Geo. Treby. The Statute of *Provisors* was, and is a Penal Law, and concerning Ecclesiastical Matters too, viz. The Collating and Presenting to Archbishopricks, Bishopricks, Benefices, and Dignities of the Church: And in this Record, now read, the Parliament give the King a limited Power, and for a short time, to dispense with that Statute.

292 *The Tryal of the Seven Bishops.*

But, to obviate all Pretence of such a Power's being inherent in the Crown, as a Prerogative they declare, (1.) That it was a *Novelty*; that is as much as to say, That the King had no such Power before. (2.) That it should not be drawn into *Example*; that is to say, That he should have no such Power for the future.

Mr. Serj. *Levinz.* Now we will go on to the Records mentioned in the Petition; those in the last King's Time, in 1662, & 1672; and that in this King's Time, in 1685 ——— Where is the Journal of the House of Lords?

[*Mr. Walker sworn.*]

L. Ch. Just. Is that the Book of the House of Lords?

Mr. Walker. It is the Journal of the House of Lords.

L. Ch. Just. Is it kept by you?

Mr. Walker. Yes, my Lord.

L. Ch. Just. Where is it kept?

Mr. Walker. In the usual place, here in *Westminster*.

Mr. Soll. Gen. What is that?

Mr. Serj. Levinz. It is the Journal of the House of Lords. ——— But, my Lord, there is one thing that is mentioned in the last Record that is read, which is worth your Lordship's and the Jury's Observation; That it is declared a *Novelty*, and a *Protestation*, that it should not be drawn into *Precedent* for the future.

L. Ch. Just. That has been observed, Brother: Let us hear your Record read.

Clerk

[Clerk reads]

Die Mercurii 18^o. die Februarii, 1662.

“ His Majesty was present this Day, sitting in
“ the Regal Crown and Robes, the Peers being
“ likewise in their Robes: The King gave Order
“ to the Gentleman-Usher of the Black-Rod, to
“ signifie to the House of Commons his Pleasure,
“ that they presently come up, and attend His
“ Majesty, with their Speaker; who being pre-
“ sent, His Majesty made this Speech following:

My Lords and Gentlemen,

I *Am very glad to meet you here again, having
thought the Time long since we parted, and
often wished you had been together, to help me in
some Occasions which have fallen out: I need not
repeat them unto you, you have all had the Noise
of them in your several Countries; and, God be
thanked, they were but Noise, without any worse
Effects.*

*To cure the Distempers, and compose the differ-
ing Minds that are yet amongst us, I set forth
my Declaration of the 26th of December. In
which you may see, I am willing to set Bounds to
the Hopes of some, and to the Fears of others; of
which, when you have examined well the Grounds,
I doubt not but I shall have your Concurrence there-
in. The Truth is, I am, in my Nature, an Ene-
my to all Severity for Religion and Conscience, how
mistaken soever it be, when it extends to Capital
and Sanguinary Punishments; which, I am told,
were began in Popish Times. Therefore, when I say
U 3 this,*

294 *The Tryal of the Seven Bishops.*

this, I hope I shall not need to warn any here, not to infer from hence, that I mean to favour Popery. I must confess to you, there are many of that Profession, who, having served my Father and myself very well, may fairly hope for some part in that Indulgence I would willingly afford to others who dissent from us. But let me explain my self, lest some mistake me herein, as I heard they did in my Declaration: I am far from meaning by this, a Toleration, or qualifying themselves thereby to hold any Offices, or Places of Trust in the Government. Nay, further; I desire some Laws may be made, to hinder the Growth and Progress of their Doctrine.

I hope you have all so good an Opinion of my Zeal for the Protestant Religion, as I need not tell you, I will not yield to any therein, not to the Bishops themselves; nor in my liking the Uniformity of it, as it is now establish'd; which being the Standard of our Religion, must be kept pure and uncorrupted, free from all other Mixtures. And yet, if the Dissenters will demean themselves peaceably and modestly under the Government, I could heartily wish, I had such a Power of Indulgence to use upon Occasion,——

Sir Geo. Treby. Pray, Sir, read that out distinctly.

[Clerk reads]

——I could heartily wish I had such a Power of Indulgence to use upon Occasion, as might not needlessly force them out of the Kingdom;

or,

or, staying here, give them Cause to conspire against the Peace of it.

My Lords and Gentlemen,

It would look like Flattering in me, to tell you in what degree I am confident of your Wisdom and Affection in all things that relate to the Greatness and Prosperity of the Kingdom. If you consider well what is best for us all, I dare say, we shall not disagree. I have no more to say to you at present, but, once again, to bid you heartily welcome.

Mr. Finch. The next thing we shall shew you is, that after the King had made this Speech, and wish'd he had such a Power of Indulgence to use upon Occasion, there was a Bill in the House of Lords brought in, to enable the King to dispense with several Laws: We shall shew you the Journal, where it was Read and Committed; but further than that it went not.

L. Ch. Just. What Use do you make of this, Mr. Finch?

Sir Rob. Sawyer. You may easily apprehend the Use we shall make of it. (The King, in his Speech, says, *He wish'd he had such a Power*;) the House of Lords thought he had not; and therefore they order'd a Bill to be brought in, to enable him.—Read the Journal of the Lords, of the 13th of March, 1662.

[Clerk reads]

Die Veneris XIII^o die Martii, 1662.

“After some Debate, whether the House should
“be put into a Grand Committee, for the further
“Debate of the Bill concerning His Majesty's Power

296 *The Tryal of the Seven Bishops.*

“ in Ecclesiastical Affairs, it was put to the Question, (*viz.*)

“ As many of your Lordships as would have this House adjourn’d, and put into a Committee, to consider of the said Bill, say, *Content* ; others, *Not Content*.

“ Passed in the Affirmative.

“ And then the Lord Chamberlain of the Household was directed to take the Chair, as formerly ; which he did accordingly.

“ And after Debate, the House was resumed, after the Grand Committee had appointed a Subcommittee, touching the said Bill.

Sir *Rob. Sawyer*. This is all in the Journal of the House of Lords about this Matter.———We will now shew you the Bill itself.

[*Clerk reads*]

An Act concerning His Majesty’s Power in Ecclesiastical Affairs.

W HEREAS divers of His Majesty’s Subjects, thro’ Error of Judgment and misguided Consciences (whereunto the Licentiousness of these late unhappy Times have much contributed) do not conform themselves to the Order of Divine Worship and Service established by Law ; and although his Majesty and both Houses of Parliament are fully satisfied, that those Scruples of Conscience, from whence this Nonconformity ariseth, are ill grounded : and that the Government of the Church, with the Service thereof (as now established) is the best that is any where extant, and most effectual to the Preservation of the Protestant Religion : Yet hoping that Clemency and Indulgence may,

may, in time, wear out those Prejudices, and reduce the Dissenters to the Unity of the Church; and considering that this Indulgence, how necessary soever, cannot be dispensed by any certain Rule, but must vary, according to the Circumstances of Time, and the Temper and Principles of those to whom it is to be granted; and his Majesty being the best Judge when, and to whom, this Indulgence is to be dispensed, or as may be most consistent with the publick Peace, and without just Cause of Offence to others: And to the end his Majesty may be enabled to exercise it with universal Satisfaction, Be it Enacted by the King's most Excellent Majesty, by Advice, and with the Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority thereof, That the King's Majesty may, by Letters Patents under the Great Seal, or by such other Ways as to his Majesty shall seem meet, dispense with one Act, or Law, made the last Session of this present Parliament, (entituled, *An Act for the Uniformity of Publick Prayers, and Administration of the Sacraments, and other Rites and Ceremonies; and for Establishing the Form of Making, and Ordaining, and Consecrating Bishops, Priests, and Deacons in the Church of England*) and with any other Laws or Statutes concerning the same; or requiring Oaths, or Subscriptions; or which do enjoin Conformity to the Order, Discipline, and Worship established in this Church, and the Penalties in the said Laws imposed, or any of them: And may grant Licences to such of his Majesty's Subjects of the Protestant Religion, of whose inoffensive and peaceable Disposition his Majesty shall be perswaded, to enjoy and use the Exercise of their Religion and Worship, though differing from the publick Rule; (the said Laws and Statutes, or any Disabilities, Incapacities, or Penalties in them or any of them contained, or any Matter or Thing to the contrary thereof notwithstanding.)

Pro-

298 *The Tryal of the Seven Bishops.*

Provided always, and be it Enacted, That no such Indulgence, License, or Dispensation hereby to be granted, shall extend, or be construed to extend to the tolerating or permitting the Use or Exercise of the Popish or Roman Catholick Religion in this Kingdom; nor to enable any Person or Persons to hold or exercise any Place or Office of publick Trust within this Kingdom, who, at the beginning of this present Parliament, were, by the Laws and Statutes of this Realm, disenabled thereunto; nor to exempt any Person or Persons from such Penalties as are by Law to be inflicted upon such as shall publish or preach any thing to the Depravation or Derogation of the Book of Common-prayer, or the Government, Order, and Ceremonies of the Church established by Law.

Provided also, and be it Enacted, That no such License or Dispensation shall extend to make any Priest or Minister capable of any Ecclesiastical Living or Benefice, with Cure, who shall not, before the Archbishop of the Province, or Bishop of the Diocels where he lives, make such Subscription to the Articles of Religion as is enjoined by the Statute of the Thirtieth of Elizabeth, made for Reformation of Disorders in the Church. Nor shall extend, or be construed to extend to dispense with the Book of Common-prayer: But that the said Book shall be constantly read in all the Cathedral and Collegiate Churches, and in all the Parish-Churches and publick Chapels.

Sir Rob. Sawyer. Here your Lordship sees what the Lords did in this Matter. — We shall now shew you, out of the Common Journal, what they did concerning this Speech of the King. — Shew the Journal of the 25th of February, 1662.

[Mr. Jodrell sworn.]

L. Ch. Just. Did you examine that, Mr. Jodrell?

Mr. Jodrell. It is the Original Book.

The

The Book deliver'd into the Court.

[Clerk reads]

Die Mercurii XXV^o die Februarii, 15 Car. II. Resolv'd, That it be presented —

Sir Rob. Sawyer. You must begin above. — The House then took into Debate —

[Clerk reads]

“ The House then took into Debate the Matter
“ touching Indulgence to Dissenters, from the Act
“ of Uniformity.

“ The Question being put, That the present

“ Debate be adjourn'd till to morrow

“ Morning,

“ The House was divided ;

“ The Yeas went out.

“ Sir John Goodrick,
and

“ Sir William Lowther,

} Tellers for the Noes ; with
the Noes, 161.

“ Sir Richard Temple,
and

“ Sir John Talbott,

} Tellers for the Yeas ; with
the Yeas, 119.

“ And so it passed in the Negative.

“ Resolv'd, &c.

“ That it be presented to the King's Majesty, as
“ the humble Advice of this House, That no Indul-
“ gence be granted to the Dissenters, from the Act
“ of Uniformity —

Mr. Sol. Gen. Does your Lordship think it to be Evidence ?

L. Ch. Just. Let them read it, Mr. Solicitor, that we may hear what it is.

[Clerk

300 *The Tryal of the Seven Bishops.*

[*Clerk reads on*]

“Order’d, That a Committee be appointed to collect and bring in the Reasons of this House for this Vote, upon the present Debate; to be presented to his Majesty, and that the nominating of the Committee be adjourn’d till to morrow Morning.

Sir *Rob. Sawyer*. That’s all.

Mr. *Sol. Gen.* Pray, if there be any thing more, read on; you shall not parcel out a Record, and take and leave what you will.

Mr. *Finch*. Did not you parcel out our Petition?

Mr. *Sol. Gen.* Read on, if there be any thing about this Matter.

Clerk. That is all,

Sir *R. Sawyer*. Turn to the 27th of *February*, 1662.

[*Clerk reads*]

Veneris xxvii Februarii, 15 Car. II.

“Sir *Heneage Finch* reports from the Committee appointed to collect and bring in the Reasons of the House for their Vote of Advice to the King’s Majesty; and in the close of those Reasons to add, *That the House will assist his Majesty with their Lives and Fortunes*: And to pen an Address to his Majesty for that purpose; the several Reasons and Address agreed by the Committee in writing, he read in his place, and did after bring up, and deliver the same in at the Clerk’s Table.

“The First Paragraph was read, and, upon the Question, agreed to.

“The Second Paragraph was read, and, upon the Question, agreed to.

“The Third was read, and, upon the Question, agreed to.

Sir *Rob. Sawyer*. Go over that, and go to the Address it self.

[*Clerk*

[Clerk reads]

May it please your most Excellent Majesty !

WE your Majesty's most Dutiful and Loyal Subjects, the Knights, Citizens, and Burgessees of the House of Commons, in Parliament assembled, (having with all Fidelity and Obedience consider'd of the severall Matters comprized in your Majesty's late Gracious Declaration of the 26th of December last, and your most Gracious Speech at the beginning of this present Session) do, in the first place for our selves, and in the Names of all the Commons of England, render your Sacred Majesty the Tribute of our most hearty Thanks for that infinite Grace and Goodness wherewith your Majesty hath been pleased to publish your Royal Intention of adhering to your Act of Indempnity and Oblivion, by a constant and religious Observance of it ; and our Hearts are further enlarged in these Returns of Thanksgiving, when we consider your Majesty's most Princely and Heroick Profession of relying upon the Affections of your People, and the abhorring all sorts of Military and Arbitrary Rule : But above all, we can never enough remember to the Honour of your Majesty's Piety, and our own unspeakable Comfort, those solemn and most endearing Invitations of us your Majesty's Subjects, to prepare Laws to be presented to your Majesty against the growth and encrease of Popery ; and withal, to provide more Laws against Licentiousness and Impiety, at the same time declaring your own Resolutions for maintaining the
Act

302 *The Tryal of the Seven Bishops.*

Act of Uniformity: And it becomes us always to acknowledge and admire your Majesty's Wisdom in this your Declaration, whereby your Majesty is pleased to resolve, not only by sumptuary Laws, but by your own Royal Example of Frugality, to restrain that Excess in Mens Expences, which is grown so general, and so exorbitant, and to direct our Endeavours to find out fit and proper Laws for Advancement of Trade and Commerce.

After all this, we most humbly beseech your Majesty to believe, That it is with extreme unwillingness and reluctancy of Heart that we are brought to differ from any thing which your Majesty hath thought fit to propose; and tho' we do no ways doubt but that the unreasonable Distempers of Mens Spirits, and the many Mutinies and Conspiracies which were carry'd on during the late intervals of Parliament, did reasonably incline your Majesty to endeavour by your Declaration to give some allay to those ill Humours, till the Parliament assembled, and the Hopes of an Indulgence, if the Parliament should consent to it, especially, seeing the Pretenders to this Indulgence did seem to make some Title to it by vertue of your Majesty's Declaration from Bredah: Nevertheless, we your Majesty's most Dutiful and Loyal Subjects, who are now return'd to serve in Parliament from those several Parts and Places of your Kingdom, for which we are chosen, Do humbly offer it to your Majesty's great Wisdom, that it is in no sort advisable that there be any Indulgence to such
Per-

The Tryal of the Seven Bishops. 303

Persons who presume to dissent from the Act of Uniformity and Religion established (for these Reasons.)

We have consider'd the Nature of Your Majesty's Declaration from Bredah, and are humbly of Opinion, That Your Majesty ought not to be pressed any further.

Because it is not a Promise in itself, but only a Gracious Declaration of Your Majesty's Intentions to do what in you lay, and what a Parliament should advise Your Majesty to do; and no such Advice was ever given, or thought fit to be offer'd: Nor could it be otherwise understood, because there were Laws of Uniformity then in being, which could not be dispensed with, but by Act of Parliament.

Sir Rob. Sawyer. This is all we read this for; your Lordship and the Jury see what is here declar'd by the Parliament, That the Act of Uniformity could not be dispensed with, without an Act of Parliament.

Next, my Lord, we shall shew you what was done in the Year 1672. — Read the King's Speech the 5th of February, 1672.

The Journals of the Lords House were deliver'd in.

[Clerk reads]

Die

304 *The Tryal of the Seven Bishops.*

Die Mercurii 5 Febr. 1672.

My Lords and Gentlemen,

I *Am glad to see you here this Day: I would have called you sooner together, but that I was willing to ease you and the Country till there were an absolute Necessity.*

Since you were last here, I have been forced to a most important, necessary, and expensive War, and I make no doubt but you will give me suitable and effectual Assistance to go through with it: I refer you to my Declaration for the Causes, and indeed the Necessity of this War; and shall now only tell you, That I might have digested the Indignities to my own Person, rather than have brought it to this Extremity, if the Interest as well as the Honour of the whole Kingdom had not been at stake; and if I had omitted this Conjuncture, perhaps I had not again ever met with the like Advantage.

You will find that the last Supply that you gave me did not answer Expectation for the Ends you gave it, the payment of my Debts; therefore I must in the next place recommend them again to your special Care.

Some few Days before I declared the War, I put forth my Declaration for Indulgence to Dissenters, and have hitherto found a good Effect of it,
by

The Tryal of the Seven Bishops. 305

by securing my Peace at Home when I had War abroad: There is one part in it that has been subject to Misconstructions, which is that concerning the Papists, as if more Liberty was granted to them than to other Recusants, when 'tis plain there is less; for the others have publick Places allow'd them, and I never intended that they should have any, but only have the freedom of their Religion in their own Houses, without any concourse of others; and I could not grant them less than this, when I had extended so much more Grace to others, most of them having been loyal, and in the service of me and the King my Father: And in the whole Course of this Indulgence, I do not intend that it shall any way prejudice the Church, but I will support its Rights and It in its full Power.

Having said this, I shall take it very ill to receive Contradiction in what I have done; and I will deal plainly with you, I am resolv'd to stick to my Declaration.

There is one Jealousie more which is maliciously spread abroad, and yet so weak and frivolous, that I once thought it not of moment enough to mention; but it may have gotten some ground with some well-minded People, and that is, That the Forces which I have rais'd in this War were design'd to controul Law and Property: I wish I had had more Forces the last Summer, the Want of them then, convinces me, I must raise more against this next Spring; and I doubt not but you will consider the Charge of them in your Supplies.

X

I will

306 *The Tryal of the Seven Bishops.*

I will conclude with this Assurance to you, That I will preserve the true Reformed Protestant Religion and the Church as it is now Established in this Kingdom, and that no Man's Property shall be invaded. I leave the rest to the Chancellor.

Mr. Serj. Pemberton. Now go to the Journal of the Commons of the 14th of February, 1672.

The Journal put in.

[*Clerk reads*]

Veneris xiiij. die Februarii, 1672.

‘ Mr. Powle reports from the Committee appointed to prepare and draw up a Petition and Address to His Majesty, the said Petition and Address, which he read in his Place, and afterwards deliver’d the same in at the Clerk’s Table; and the same being again twice read, is as followeth, (viz.)

‘ *Most Gracious Sovereign!*

‘ **W**E Your Majesty’s most Loyal and Faithful Subjects, the Commons assembled in Parliament, do in the first place, as in all Duty bound, return your Majesty our most humble and hearty Thanks for the many Gracious Promises and Assurances which your Majesty has several times during this present Parliament given to us, That your Majesty would Secure and Maintain unto us the true Reformed Protestant Religion, our Liberties and Properties, which most gracious Assurances your Majesty, out
‘ of

The Tryal of the Seven Bishops. 307

‘ of your great Goodness, has been pleased to
‘ renew unto us, more particularly at the
‘ Opening of this present Session of Parlia-
‘ ment.

‘ And further, we crave Leave humbly to
‘ represent, That we have with all Duty and
‘ Expedition taken into our Consideration the
‘ several parts of your Majesty’s last Speech
‘ to us ; and withal, the Declaration therein
‘ mention’d, for Indulgence to Dissenters, da-
‘ ted the 15th of *March* last : And we find our
‘ selves bound in Duty to inform your Majesty,
‘ That Penal Statutes in Matters Eccle-
‘ siastical cannot be Suspended, but by Act of
‘ Parliament.

‘ We therefore, the Knights, Citizens and
‘ Burgesses of your Majesty’s House of Com-
‘ mons, do most humbly beseech Your Majesty, That
‘ the said Laws may have their free Course, until it
‘ shall be otherwise provided for by Act of Parlia-
‘ ment. And, That your Majesty would gra-
‘ ciously be pleased to give such Directions
‘ herein, that no Apprehensions or Jealousies
‘ may remain in the Hearts of your Majesty’s
‘ good and faithful Subjects.

‘ Resolv’d, &c.

‘ That this House doth agree with the Committee
‘ in the Petition and Address by them drawn up, to
‘ be presented to His Majesty.

Sir Rob. Sawyer. Now turn to the 24th of Fe-
bruary, 1672, in the same Book.

[Clerk reads]

‘ *Luna 24th of February, 1672.*

‘ *Mr. Secretary Coventry reports and presents in Writing from his Majesty, his Answer to the humble Petition and Address of this House, which was thrice read, and the Matter debated, and is as followeth, (viz.)*

CHARLES R.

HIS Majesty hath received an Address from you, and he hath seriously consider'd of it, and returns you this Answer, That he is very much troubled, that that Declaration which he put out for Ends so necessary, for the Quiet of his Kingdom, and especially in that Conjunction, should have proved the Cause of Disquiet in his House of Commons, and give occasion to the questioning of his Power in Ecclesiasticks, which he finds not done in the Reigns of any of his Ancestors: He is sure he never had Thoughts of using it otherwise than as it hath been intrusted in him, to the Peace and Establishment of England, and the Ease of all his Subjects in general. Neither does he pretend to the Right of suspending any Laws wherein the Properties, Rights, or Liberties of any of his Subjects are concerned, nor to alter any thing in the established Doctrine or Discipline of the Church of England. But his only Design in this, was to take off the Penalties, the Statutes inflicted upon Dissenters, which he believes, when well considered of, you yourselves would not wish executed

ac-

The Tryal of the Seven Bishops. 309

according to the Rigour and Letter of the Law; neither hath he done this with any thought of avoiding or precluding the Advice of his Parliament; and if any Bill shall be offer'd, which shall appear more proper to attain the aforesaid Ends, and secure the Peace of the Church and Kingdom, when tender'd in due manner to him, he will shew how readily he will Concur in all ways that shall appear good for the Kingdom.

Sir Rob. Sawyer. Turn to the 26th of February, 1672.

[Clerk reads]

Die Mercurii xxvj. February, 1672.

Mr. Powle reports from the Committee appointed to consider of an Answer to return to his Majesty's last Message, upon the Debate of the House, an Answer agreed by the Committee, and drawn up, and put into Writing, which he read in his Place, and then deliver'd the same in at the Clerk's Table, where it was twice read, and is as followeth, (*viz.*)

Most Gracious Sovereign!

WE your Majesty's most Humble and Loyal Subjects, the Knights, Citizens, and Burgessees in this present Parliament assembled, do render to your most Sacred Majesty our most Dutiful Thanks, for that to our unspeakable Comfort, your Majesty has been pleased so often to reiterate unto us those gracious Promises and Assurances of maintaining the Religion now Established, and the Liberties and Properties of your People; and we do not in the

310 *The Tryal of the Seven Bishops.*

least measure doubt, but that your Majesty had the same gracious Intention in giving Satisfaction to your Subjects, by your Answer to our last Petition and Address: Yet upon a serious Consideration thereof. We find that the said Answer is not sufficient to clear the Apprehensions that may justly remain in the Minds of your People, by your Majesty's having claimed a Power to suspend Penal Statutes in Matters Ecclesiastical, and which your Majesty does still seem to assert in the said Answer, to be intrusted in the Crown, and never questioned in the Reigns of any of your Ancestors; wherein we humbly conceive your Majesty has been very much Misinformed, since no such Power ever was claimed or exercised by any of your Majesty's Predecessors; and if it should be admitted, might tend to the interrupting the free Course of the Laws, and altering the Legislative Power, which hath always been acknowledged to reside in your Majesty, and your two Houses of Parliament.

We therefore with an unanimous Consent become again most humble Suitors unto your Sacred Majesty, That you would be pleased to give us a full and satisfactory Answer to our said Petition and Address, and that your Majesty would take such effectual Order, that the Proceedings in this Matter may not for the future be drawn into Consequence or Example.

The Tryal of the Seven Bishops. 311

‘The Answer to his Majesty’s Message was again
‘read by Paragraphs, and the several Paragraphs to
‘the last, were, upon the Question, severally a-
‘greed.

‘The last Paragraph being read, and the Question
‘being put, that the Word *Unanimous* should stand
‘in the Paragraph;

The House divided.——The Noes go out.

Tellers,
Lord *St. John* } for the Yeas, 180.
Mr. *Vaughan*, }

Sir *Richard Temple* } for the Noes, 77.
Sir *Philip Howard* }

‘And so it was resolv’d in the Affirmative.

‘The Question being put, to agree to the Para-
‘graph, it was resolv’d in the Affirmative.

‘Resolv’d, &c.

‘That the whole Address be agreed to, as it was
‘brought in by the Committee.

Sir *Rob. Sawyer*. Now turn to the Lords Jour-
nal, and there your Lordship will see, that the King
does Communicate this Address to the Lords, and
desires their Advice. Read the 1st of *March*, 1672.

[*Clerk reads*]

Die Sabbati primo die Martii, 1672.

“His Majesty this Day made a short Speech, as
“follows:

My Lords,

YOU know, that at the Opening of this Session, I spoke here to your Satisfaction; it has notwithstanding begotten a greater disquiet in the House of Commons than I could have imagined.

I received an Address from them, which I looked not for, and I made them an Answer that ought to have contented them; but on the contrary, they have made me a Reply of such a nature, that I cannot think fit to proceed any farther in this Matter without your Advice.

I have commanded the Chancellor to acquaint you with all the Transactions, wherein you will find both me and your selves highly concerned: I am sensible for what relates to me, and I assure you, my Lords, I am not less so for the Privilege and the Honour of this House.

“Afterwards the Lord Chancellor read the several Papers of Addresses of the House of Commons, and his Majesty’s Answer thereunto, and opened his Majesty’s Proceedings upon them.

“The Address of the House of Commons was read.

Sir

The Tryal of the Seven Bishops. 313

Sir Rob. Sawyer. Pass over that, you have read it already.

[Clerk reads]

“The next, his Majesty’s Answer to the Address of the House of Commons, was read as follows:—

Sir Rob. Sawyer. That hath been read too.

[Clerk reads]

“Then was read the Reply of the House of Commons to his Majesty’s Answer, as followeth: Mr. Finch. You have read that likewise.

[Clerk reads]

“Upon this it is ordered, That the Lord Treasurer, Duke of *Buckingham*, Earl of *Bridgwater*, Earl of *Northampton*, Earl of *Bristol*, Earl of *Berks*, Earl of *Bullingbroke*, and the Earl of *Anglesey*, do forthwith withdraw and consider what humble Thanks is fit to be given to his Majesty for his great Favour in communicating this Business to this House, and report the same. And accordingly, the said Lords Committees did withdraw themselves for that purpose.

“The Lords being returned, the Duke of *Buckingham* reported what the Committee had prepared to present to his Majesty by way of Thanks, which was read as followeth:

WE the Lords Spiritual and Temporal in Parliament assembled, do unanimously present to your Sacred Majesty Our most humble Thanks, for having been pleased to Communicate to us what has passed

314 *The Tryal of the Seven Bishops.*

sed between your Majesty and the House of Commons, whereby you have graciously offered us the means of shewing our Duty to your Majesty, and of asserting the Ancient Just Rights and Privileges of the House of Peers.

“The Question being put, Whether to agree
“with the Committee.

“It was resolved in the Affirmative.

“Ordered, That his Majesty be desired, that his
“Speech, and the Papers read this Day, may be entered into the Journal-Book of this House.

“The Lord Treasurer, the Duke of *Buckingham*,
“and the Lord Chamberlain, are appointed to attend his Majesty presently, to know his Pleasure,
“what time and place this whole House shall wait
“upon him, to present the humble Thanks of this
“House, for his great Favour shewed this Day.

“Ordered, That upon *Monday* Morning next
“this House will debate the whole Matter of his
“Majesty’s Speech, and these Papers; and to consider the Points of Privilege, and what else may
“arise thereupon.

“The Lords that were appointed to attend
“his Majesty, return with this Answer :

“That his Majesty has appointed this Afternoon
“at Five of the Clock, for this House to wait upon
“him in the Banqueting-house at *Whitehall*.

“Ordered, That all the Judges now in Town,
“shall attend this House on *Monday* Morning next.

Sir *Rob. Sawyer*. The 3d of *March* 1672, is the next.

[Clerk

[Clerk reads]

Die Luna 3. die Martii, 1672.

“The Lord Chancellor reported, That the whole
“House on *Saturday* last waited upon his Majesty
“at *Whitehall*, and presented the humble Address
“of this House, and his Majesty was pleased to re-
“turn this Answer.

My Lords,

I Take this Address of yours very kindly ;
I will always be very affectionate to
you, and expect you should stand by me, as I
will always by you.

“Then the House took into Consideration the
“whole Matter of his Majesty’s Speech on *Saturday*,
“and the three Papers which his Majesty acquaint-
“ed this House withal ; and all the said Papers in
“their order were read, and after a long Debate,
“the Question being put,

“Whether this House shall in the first place en-
“ter into Consideration of giving Advice to his
“Majesty ?

“It was resolved in the Affirmative.

“It is ordered, That this Business shall be taken
“into Consideration to morrow Morning, at Nine
“of the Clock, the first Business.

“Ordered, That the Judges now in Town, shall
“attend to morrow Morning.

Sir Rob. Sawyer. The 4th of *March*, 1672.

[Clerk reads]

“Next, The House took into Consideration the
“Advice to be given to his Majesty concerning the
“Ad-

316 *The Tryal of the Seven Bishops.*

“Addresses made to him from the House of Commons.

“The Addresses of the House of Commons, and his Majesty’s Answer were read, and after a long Debate, the Question being put, Whether the King’s Answer to the House of Commons, in referring the Points now controverted to a Parliamentary way by Bill, is good and gracious? that being a proper and natural Course for Satisfaction therein.

“It was resolved in the Affirmative.

Sir Rob. Sawyer. The 8th of March, 1672.

[Clerk reads]

Die Sabbatii 8^o die Martii, 1672.

“His Majesty in his Royal Throne, adorned with his Crown and Regal Ornaments, commanded the Gentleman-Usher of the Black-Rod to give notice to the House of Commons, that they attend his Majesty presently.

“The Commons being come, with their Speaker, his Majesty made this short Speech following.

My Lords and Gentlemen,

Yesterday you presented me an Address, as the best Means for the satisfying and composing the Minds of my Subjects, to which I freely and readily agreed, and I shall take care to see it perform’d accordingly.

I hope on the other side, you Gentlemen of the House of Commons will do your Part; for I must put you in mind, it is near five Weeks since I demanded a Supply, and what you voted unanimously upon it, did both give Life to my Affairs at home, and dishearten mine Enemies abroad; but the seeming

The Tryal of the Seven Bishops. 317

ing Delay it hath met withal since, hath made them to take new Courage; and they are now preparing for this next Summer a greater Fleet (as they say) than ever they have had yet; so that if the Supply be not very speedily dispatch'd, 'twill be altogether ineffectual, and the Safety, Honour, and Interest of England must of necessity be expos'd. Pray lay this to Heart, and let not the Fears and Jealousies of some draw an inevitable Ruin upon us all.

My Lords and Gentlemen,

If there be any Scruple remaining with you concerning the Suspension of Penal Laws, I here faithfully promise you, That what has been done in that Particular shall not for the future be drawn either into Consequence or Example. And as I daily expect from you a Bill for my Supply, so, I assure you, I shall as willingly receive and pass any other you shall offer me that may tend to the giving you Satisfaction in all your just Grievances.

' Next my Lord Chancellor reported, That both
' Houses waited upon the King yesterday, and pre-
' sented him with the Address against the Growth
' of Popery; and his Majesty has been pleas'd to re-
' turn this Answer:

My Lords and Gentlemen,

I Do heartily agree with you in your Address, and shall give speedy Order to have it put in Execution. There is one part to which I believe it is not your Intention that it should extend; for I can
scarce

318 *The Tryal of the Seven Bishops.*

scarce say, those are in my Pay that are presently to be employ'd abroad. But, as for all other parts, I shall take Care it shall be done as you desire.

“ After which the Lord Chancellor said, He had
 “ somewhat more to impart to the House by the
 “ King's Command, which was,

That His Majesty, last Night, having spoken with several Members of both Houses, found some Dissatisfaction remaining concerning his Answer to their Address, in the Particular of the Officers to be employ'd abroad, of which number he had five or six that were of the best Officers of France and Flanders, and (being his own Subjects) he had been very solicitous to get : But if that bred any Umbrage, the King commanded him to let them know, That he resolves to give both Houses full Satisfaction to their Desires.

There was another Particular that the Lord Chancellor said he thought fit to acquaint them with, which, tho' it was by His Majesty's leave, yet it was not by his Command ; however, he thought it his Duty to acquaint the House with it, (Mr. Secretary Coventry intending to acquaint the House of Commons with the same) That His Majesty had, the last Night, in pursuance of what he then intended and declar'd this Morning, concerning the Suspension of Penal Laws not being for the future drawn either into Consequence or Example, caused the Original Declaration under the Great Seal to be cancel'd in his presence ; whereof himself and several other Lords of the Council were Witnesses.

Sir Robert Sawyer. Turn to the 10th of March, 1672.

[Clerk

[Clerk reads]

Die Luna decimo die Martii, 1672.

“ Order’d, That what my Lord Chancellor said
“ on *Saturday* last concerning his Majesty’s causing
“ the vacating his Indulgence under the Great Seal
“ of *England*, shall be enter’d into the Journal-Book
“ of this House, as on *Saturday* last.

Sir *Rob. Sawyer*. We shall now come to that which
past in the Parliament in 1685. — Read the 9th of
November, 1685.

The Journal of the Lords, 1685, put in.

[Clerk reads]

“ His Majesty being on his Royal Throne, adorn-
“ ed with his Regal Robes and Crown (the Lords
“ being in their Robes also) commanded the Gen-
“ tleman-Usher to give Notice to the House of
“ Commons that they immediately attend his Ma-
“ jesty ; who being come, his Majesty made the
“ following the Speech.

My Lords and Gentlemen,

After the Storm that seemed to be coming upon
us when we parted last, I am glad to meet you
all again in so great Peace and Quietness, GOD
Almighty be praised, by whose Blessing that Rebellion
was suppressed ; but when I reflect what an inconsiderable
number of Men began it, and how long they
carried it on without any opposition, I hope every
body will be convinced that the Militia, which hath
hitherto been so much depended upon, is not sufficient
for such Occasions, and that there is nothing but a
good

320 The Tryal of the Seven Bishops.

good force of well-disciplined Troops in constant Pay that can defend us from such as, either at Home or Abroad, are disposed to disturb us.

And, in truth, my Concern for the Peace and Quiet of my Subjects, as well as for the Safety of the Government, made me think it necessary to encrease the number to the proportion I have done; this I owed as well to the Honour as to the Security of the Nation, whose Reputation was so infinitely exposed unto all our Neighbours, by having lain open to this late wretched Attempt; that it is not to be repair'd without keeping such a Body of Men on Foot, that none may ever have the Thoughts again of finding us so miserably unprovided.

It is for the Support of this great Charge, which is now more than double to what it was, that I ask your Assistance in giving me a Supply answerable to the Expence it brings along with it: And I cannot doubt, but what I have begun so much for the Honour and Defence of the Government, will be continued by you with all the cheerfulness and readiness that is requisite for a Work of so great Importance.

Let no Man take Exception that there are some Officers in the Army not qualified according to the late Tests for their Employments: The Gentlemen, I must tell you, are, most of them, well known to me, and having formerly served me on several Occasions, and always approved the Loyalty of

The Tryal of the Seven Bishops. 321

of their Principles by their Practices, I think them fit now to be employ'd under me; and will deal plainly with you, that after having had the Benefit of their Services in such time of Need and Danger, I will neither expose them to disgrace, nor my self to the want of them, if there should be another Rebellion to make them necessary to me.

I am afraid some Men may be so wicked to hope and expect that a Difference may happen between you and me upon this Occasion; but when you consider what Advantages have risen to us, in a few Months, by the good Understanding we have hitherto had, what wonderful Effects it has already produced in the change of the whole scene of Affairs abroad, so much more to the Honour of the Nation, and the figure it ought to make in the World, and that nothing can hinder a further progress in this way, to all our satisfactions, but Fears and Jealousies amongst ourselves: I will not apprehend that such a Misfortune can befall us as a Division, or but a Coldness between me and you; nor that any thing can shake you in your Steadiness and Loyalty to me, who, by GOD's Blessing, will ever make you all Returns of Kindness and Protection, with a Resolution to venture even my own Life in the Defence of the true Interest of this Kingdom,

Sir Rob. Sawyer. Turn to the Commons Journal, the 16th of November, 1685.

The Journal of the House of Commons put in.

322 *The Tryal of the Seven Bishops.*

[Clerk reads]

Die Luna 16 die Novemb. 1685.

Most Gracious Sovereign!

WE your Majesty's most Loyal and Faithful Subjects, the Commons in Parliament assembled, do, in the first place (as in Duty bound) return your Majesty our most humble and hearty Thanks for your great Care and Conduct in the suppression of the late Rebellion, which threaten'd the overthrow of this Government, both in Church and State, and the uttermost extirpation of our Religion by Law established, which is most dear unto us, and which your Majesty has been pleased to give us repeated Assurances you will always defend and support, which, with all grateful Hearts, we shall ever acknowledge.

We further crave leave to acquaint your Majesty, That we have with all Duty and Readiness taken into our Consideration your Majesty's Gracious Speech to us; and as to that part of it relating to the Officers in the Army not qualified for their Employment according to an Act of Parliament made in the 25th Year of the Reign of your Majesty's Royal Brother, of Blessed Memory, entituled, *An Act for preventing Danger that may happen by Popish Recusants*: We do, out of our bounden Duty, humbly represent unto your Majesty, That those Officers cannot by Law be capable of their Employments, and
that

The Tryal of the Seven Bishops. 323

that the Incapacities they bring upon themselves thereby, can no ways be taken off but by Act of Parliament.

Therefore *out of the great Deference and Duty we owe unto your Majesty (who has been graciously pleased to take Notice of their Services to you)* we are preparing a Bill to pass both Houses for your Royal Assent, to indemnify them from the Penalties they have now incurred; and because the continuance of them in their Employments may be taken to be a dispensing with that Law without Act of Parliament, the Consequence of which is of the greatest Concern to the Rights of all your Majesty's Dutiful and Loyal Subjects, and to all the Laws made for the Security of their Religion.

We therefore, *the Knights, Citizens, and Burgeesses of your Majesty's House of Commons*, do most humbly beseech your Majesty, that you would be graciously pleased to give such Direction therein, that no Apprehensions or Jealousies may remain in the Hearts of your Majesty's good and faithful Subjects.

Mr. *Pollixfen*. My Lord, we pray that these half dozen Lines of the Statute 1 *Eliz.* may be read.

A Statute-Book was then produced by Mr. *Ince*.

L. Ch. Just. No, We will have it read out of our own Book, which was deliver'd into Court.

[Clerk reads]

This is 1 *Eliz. cap. 2.* An Act for Uniformity of Religion, &c. Whereabout is it?

Mr. *Ince.* 'Tis the fifteenth Paragraph [at these Words] — And for due Execution, &c.

[Clerk reads]

And for due Execution hereof, the Queen's Most Excellent Majesty, the Lords Spiritual and Temporal in this present Parliament assembled, do, in God's Name, earnestly require and charge all the Archbishops, Bishops, and other Ordinaries, that they shall endeavour themselves, to the utmost of their Knowledge, that the due and true Execution hereof may be had throughout their Diocesses and Charges, as they will answer before God for such Evils and Plagues, wherewith Almighty God may justly punish his People for neglecting this good and wholesome Law.

Mr. Serj. *Levinz.* Now, my Lord, if your Lordship pleases, the Charge is a Charge for a Libel, and there are two Things to be consider'd :

First, Whether the Bishops did deliver this Paper to the King : But that we leave upon the Evidence that has been given ; only we say, there has been no direct Proof of that.

In the next place, Supposing they did deliver this Petition to the King, Whether this be a Libel upon the Matter of it, the manner of delivering it, or the Persons that did it?

And

And with submission, my Lord, this cannot be a Libel, altho' it be true that they did so deliver it.

First, my Lord, there is a little Disingenuity offer'd to my Lords the Bishops, in only setting forth part, and not the whole; in only reciting the Body, and not the Prayer.

But, my Lord, with your Lordship's favour, taking the Petitionary part, and adding it to the other, it quite alters the Nature of the thing; for it may be, a Complaint without seeking Redress might be an ill matter; but here, taking the whole together, it appears to be a Complaint of a Grievance, and a desire to be eased of it.

With your Lordships Favour, the Subjects have a right to Petition the King in all their Grievances, so say all our Books of Law, and so says the Statute of the Thirteenth of the late King: They may Petition, and come and deliver their Petition under the number of Ten, as heretofore they might have done, (says the Statute) so that they all times have had a right so to do; and indeed if they had not, it were the most lamentable thing in the World, that Men must have Grievances upon them, and yet they not to be admitted to seek Relief in an humble way.

Now, my Lord, this is a Petition setting forth a Grievance, and praying his Majesty to give Relief. And what is this Grievance? It is that Command of his, by that Order made upon my Lords the Bishops, to distribute the Declaration, and cause it to be read in the Churches: And pray, my Lord, let us consider what the Effects and Consequences of that Distribution and Reading is; It is to tell the People, that they need not submit to the *Act of Uniformity*, nor to any Act of Parliament made about Ecclesiastical Matters, for they are suspended and dispensed with: This my Lords

326 *The Tryal of the Seven Bishops.*

the Bishops must do, if they obey this Order: But your Lordship sees, if they do it, they lie under an *Anathema* by the Statute of 1 *Eliz.* for there they are under a Curse if they do not look to the Preservation and Observation of that Act; but this Command to distribute and Read the Declaration, whereby all these Laws are dispensed with, is to let the People know, they will not do what that Act requires of them.

Now, with your Lordships Favour, my Lords the Bishops lying under this Pressure, the weight of which was very grievous upon them, they by Petition apply to the King to be eased of it, which they might do as Subjects: Besides, my Lord, they are Peers of the Realm, and were most of them sitting as such, in the last Parliament, where (as you have heard) it was declared, such a Dispensation could not be, and then in what a Case should they have been, if they should have distributed this Declaration, which was so contrary to their own Actings in Parliament; What could they have answered for themselves, had they thus contributed to this Declaration, when they had themselves before declared, that the King could not dispense?

And that was no new thing, for it had been so declared in a Parliament before, in two Sessions of it, in the late King's Reign, within a very little time one of another; and such a Parliament that were so liberal in their Aids to the Crown, that a Man would not think they should go about to deprive the Crown of any of its Rights; it was a Parliament that did do as great Services for the Crown as ever any did, and therefore there is no reason to suspect, that if the King had had such a Power, they would have appeared so earnest against it.

But,

But, my Lord, if your Lordship pleases, these are not the beginnings of this Matter, for we have shewed you from the Fifteenth of *Richard* the Second, that there was a Power granted by the Parliament to the King to dispense with a particular Act of Parliament, which argues, that it could not be without an Act of Parliament. And in 1662, 'tis said expressly, that they cannot be dispensed with, but by an Act of Parliament: 'Tis said so again in 1672; the King was then pleased to assume to himself such a Power, as is pretended to in this Declaration; yet, upon Information from his Houses of Parliament, the King declared himself satisfied, that he had no such Power, cancelled his Declaration, and promised, that it should not be drawn into Consequence or Example. And so the Commons by their Protestation said in *Richard* the Second's Time, That it was a Novelty, and should not be drawn into Consequence or Example.

Now, my Lord, if your Lordship pleases, if this Matter that was commanded the Bishops to do were something which the Law did not allow of, surely then my Lords the Bishops had all the reason in the World to apply themselves to the King, in an humble manner to acquaint him, why they could not obey his Commands, and to seek Relief against that which lay so heavy upon them.

Truly, my Lord, Mr. *Attorney* was very right in the opening of this Cause at first, that is, That the Government ought not to receive Affronts, no, nor the inferior Officers are not to be affronted; a Justice of Peace, so low a Man in Office, is not; for a Man to say to a Justice of Peace, when he is executing his Office, that he does not do right, is a great Crime, and Mr. *Attorney* said right in it: But suppose a Justice of Peace were making of a Warrant to

328 *The Tryal of the Seven Bishops.*

a Constable to do something that was not legal for him to do, if the Constable should petition this Justice of the Peace, and therein set forth, Sir, you are about to command me to do a thing which, I conceive, is not legal; surely that would not be a Crime that he was to be punish'd for, for he does but seek Relief, and shew his Grievance in a proper way, and the Distress he is under.

My Lord, this is the Bishops Case, with submission; they are under a Distress, being commanded to do a thing which they take not to be legal, and they with all humility, by way of Petition, acquaint the King with this Distress of theirs, and pray him, that he will please to give Relief.

My Lord, there is no Law but is either an Act of Parliament, or the Common Law; for an Act of Parliament, there is none for such a Power, all that we have of it in Parliamentary Proceedings is against it; and for the Common Law, (so far as I have read of it) I never did meet with any thing of such a nature as a Grant or Dispensation that pretended to dispense with any one whole Act of Parliament; I have not so much as heard of any such thing mention'd by any of the King's Council: But here, my Lord, is a Dispensation that dispenses with a great many Laws at once, truly I cannot take upon me to tell how many, there may be forty, or above, for ought I know.

Therefore, my Lord, the Bishops lying under such a Grievance as this, and under such a Pressure, being order'd to distribute this Declaration in all their Churches, which was to tell the People they ought to be under no Law in this case, which surely was a very great Pressure both in point of Law and Conscience too, they lying under such Obligations to the contrary as they did; with submission to your Lordship and you Gentlemen of the Jury, if they did deliver

liver this Petition, (publishing of it I will not talk of, for there has been no Proof of a Publication) but a delivering of a Petition to his Majesty in the most secret and decent manner that could be imagin'd, my Lords the Bishops are not guilty of the Matter charg'd upon them in this Information: It has been expressly prov'd, that they did not go to disperse it abroad, but only deliver'd it to the King himself; and, in short, my Lord, if this should be a Libel, I know not how sad the Condition of us all would be, if we may not petition when we suffer.

Mr. *Finch*. My Lord, I challenge them to shew us any one Instance of such a Declaration, such a general Dispensation of Laws from the Conquest till 1672. The first Umbrage of such a thing is that of *Car. II.* 1662, but your Lordship hears the Declaration of the Parliament upon it. Before that, as there was no such thing, so your Lordship sees what the Parliament did to enable the King (not to do this thing, but something like it) in *Richard* the Second's time, where you see the Parliament did give the King a Power to dispense with the Statute of Provisors for a time, but at the same time declar'd that very Grant of their own to be a Novelty, and that it should not be drawn into Consequence or Example.

My Lord, we shall leave it upon this point; to suspend Laws is all one as to abrogate Laws, for so long as a Law is suspended, whether the Suspension be temporary, or whether it be for ever, whether it be at once, or at several times, the Law is abrogated to all intents and purposes: But the Abrogation of Laws is part of the Legislature, that legislative Power is lodg'd (as I said before, and I could never find it otherwise in all our Law) in King, Lords and Commons —

L. Ch. Just. You did open that before, Mr. *Finch*.
Mr.

330 *The Tryal of the Seven Bishops.*

Mr. Finch. With this, my Lord, That my Lords the Bishops finding this Order made upon them to publish this Declaration, did what in Duty they were bound to do, and unless the Jury do find, that they have done that which is contrary to Law and to the Duty of their Places, and that this Petition is a Libel, and a seditious Label, with an intent to stir up Sedition among the People, (we rely upon it) my Lords the Bishops can never be found Guilty upon this Information.

L. Ch. Just. Have you now done, Gentlemen?

Mr. Finch. Yes, my Lord, till they give us further Occasion; if they have any other Evidence to offer, we must answer it; if not, this is the Answer we give to what they have said.

Mr. Sol. Gen. We make no Bargain with you; if you have done, say so.

L. Ch. Just. You must know, that you are not to have the last Word.

Mr. Sol. Gen. You have been three hours already, if you have any more to say, pray conclude.

Mr. Finch. If they say they have no more Evidence, then we know what we have to do.

L. Ch. Just. If you say any thing more, pray let me advise you one thing, don't say the same thing over and over again, for after so much Time spent, it is irksome to all the Company as well as to me.

Mr. Finch. My Lord, we have no more Evidence to offer to your Lordship at present, unless they, by offering new Evidence, give us occasion to Reply upon them.

L. Ch. Just. Gentlemen, you shall have all the legal Favour and Advantage that can be; but pray let us keep up to an orderly decent method of proceeding.

Sir Rob. Sawyer. Pray, my Lord, favour me a Word before we conclude; my Lord, I do find
very

very few Attempts of this nature in any King's Reign.

In the Reign of *Henry* the Fourth there was an Act of Parliament, That Foreigners should have a Free Trade in the City of *London*, notwithstanding the Franchises of *London*: After the Parliament rose, the King issued out his Proclamation, forbidding the Execution of that Law, and commanding that it should be in suspense *usque ad proximum Parliamentum*, yet that was held to be against Law.

L. Ch. Just. Sir *Rob Sawyer*, that which you are to look to, is the publishing of this Paper, and whether it be a Libel or no. And as to the Business of the Parliaments you mention'd, they are not to the purpose.

Sir *Rob. Sawyer*. My Lord, I say, I would put it where the Question truly lies; if they don't dispute the Point, then we need not labour it, but I don't know whether they will or no, and therefore I beg your Lordship's favour to mention one Case more, and that is upon the Statute of 31 *Hen. VIII*, cap. 8. which enables the King by Proclamation in many Cases to create the Law, which Statute was repeal'd by 1 *Edw. VI*, cap. 12. That very Act does recite, that the Law is not to be alter'd, or restrain'd, but by Act of Parliament, and therefore the Parliament enables the King to do so and so: But that was such a Power that the Parliament thought not fit to continue, and it was afterwards repeal'd; but it shews, that at that time the Parliament was of the same Opinion as to this matter that other Parliaments have been since.

Mr. *Sommers*. My Lord, I would only mention the great Case of *Thomas* and *Sorrel* in the Exchequer Chamber, upon the validity of a Dispensation of the Statute of *Edward* the Sixth, touching selling of Wine. There 'twas the Opinion of every one of the

332 *The Tryal of the Seven Bishops.*

the Judges, and they did lay it down as a settled Position, That there never could be an Abrogation or a Suspension (which is a temporary Abrogation) of an Act of Parliament, but by the Legislative Power. That was a Foundation laid down quite thro' the debate of that Case. Indeed it was disputed, how far the King might dispense with the Penalties in such a particular Law, as to particular Persons, but it was agreed by all, that the King had no Power to suspend any Law. And, my Lord, I dare appeal to *Mr. Attorney-General* himself, Whether in the Case of *Godden* and *Hales*, which was lately in this Court, to make good that Dispensation, he did not use it as an Argument then, that it could not be expounded into a Suspension; he admitted it, not to be in the King's Power to suspend a Law; but, that he might give a Dispensation to a particular Person, was all he took upon him to justify at that time.

My Lord, by the Law of all civiliz'd Nations, if the Prince does require something to be done which the Person who is to do it takes to be unlawful, it is not only lawful, but his Duty, *Rescribere Principi*. This is all that is done here, and that in the most humble manner that could be thought of; your Lordship will please to observe how far it went, how careful they were, that they might not any way justly offend the King. They did not interpose by giving Advice, as Peers; they never stirr'd till it was brought home to themselves; when they made their Petition, all they beg is, That it may not so far be insisted upon by His Majesty, as to oblige them to read it; whatever they thought of it, they do not take upon 'em to desire the Declaration to be revoked.

My

The Tryal of the Seven Bishops. 333

My Lord, as to Matters of Fact alledg'd in the said Petition, that they are perfectly true, we have shewn by the Journals of both Houses. In every one of those Years, which are mention'd in the Petition, this Power of Dispensation was consider'd in Parliament, and, upon debate, declar'd to be contrary to Law: There could be no Design to diminish the Prerogative, because the King hath no such Prerogative.

Seditious, my Lord, it could not be, nor could possibly stir up Sedition in the Minds of the People, because it was presented to the King in private and alone: False it could not be, because the *Matter* of it is true. There would be nothing of Malice, for the Occasion was not sought, the Thing was pressed upon them: And a Libel it could not be, because the Intent was innocent, and they kept within the Bounds set by the Act of Parliament, that gives the Subject leave to apply to his Prince by Petition when he is aggriev'd.

Mr. Att. Gen. Have you done, Gentlemen?

Mr. Finch. We have done, Sir.

Mr. Att. Gen. My Lord, I shall be a great deal more merciful to your Lordship and the Jury than they have been, who have spent these four Hours in that which I think is not pertinent to the Case in question: They have let themselves into large Discourses, making great Complaints of the Hardships put upon my Lords the Bishops, by the Order of Council to read His Majesty's Declaration, and putting these words into the Information of *Seditious, Malicious, and Scandalous*: But, my Lord, I admire that Sir *Robert Sawyer* should make such Reflections and Observations upon these words, when I am sure he will scarce find any one of his own exhibiting that has so few of those aggravating Words as this
has;

334 *The Tryal of the Seven Bishops.*

has ; and therefore that might have been very well spared, especially by him.

In the next place, my Lord, we are told what great Danger our Religion is in by this Declaration, I hope we have an equal Concern for that with them, or any Person else whatsoever ; but however, I am sure our Religion teaches us, not to preserve our Religion, or our Lives, by any illegal Courses, and the Question is, Whether the Course that my Lords the Bishops have taken to preserve (as they say) our Religion be legal, or not ; if it be not legal, then I am sure our Religion will not justify the using such a Course for never so good an End.

My Lord, for the Thing it self, I do admire that they, in so long a time and search that they have made, should not (which I expected) produce more Presidents of such a Paper as this is : They challenge us to shew that ever there was any such Declaration as this, I'll turn the same Challenge upon them ; Shew me any one Instance, that ever so many Bishops did come, under pretence of a Petition, to reflect upon the King out of Parliament.

Sir Rob. Sawyer. Is that your way of answering, Mr. Attorney ?

Mr. Att. Gen. Pray, Sir Robert Sawyer, you have had your Time, don't interrupt us, sure we have as much Right to be heard as you.

L. Ch. Just. You have been heard over and over again, Sir Robert Sawyer, already.

Sir Rob. Sawyer. My Lord, I don't intend to interrupt him.

Mr. Sol. Gen. We cannot make them be quiet, they will still be chopping in upon us.

Mr. Att. Gen. That is an Art that some People have always practised, not to permit any Body to speak, but themselves.

But,

The Tryal of the Seven Bishops. 335

But, my Lord, I say, that those few Instances that they have produced are nothing at all to this Matter, that is now upon Tryal before your Lordship and this Jury; nay, they are Evidences against them, for they are only Matters transacted in Parliament, which are no more to be apply'd to this thing that is in Controversy now, than any the most remote Matter that could be thought of; and tho' they have gone so high in point of time, as to the Reign of *Richard* the Second, yet they have nothing between that and the late King's Reign, to which, at last, they have descended down.

But, my Lord, I say, that all the Talk of *Richard* the Second's Time is wholly out of the Case; truly, I do not doubt, but that in *Richard* the Second's Time they might find a great many Instances of some such sort of Petitioning as this, for our Histories tell us, that at that time they had 40000 Men in Arms against the King, and we know the Troubles that were in that King's Reign, and how at length he was deposed; but certainly there may be found Instances more applicable to the Case, than those they produce: As for those in King *Charles* the Second's Time, do they any ways justify this Petition? for now they are upon justifying the Words of their Petition, that this Power has been declared to be illegal in 1662, 1672, & 1685.

For what was done in 1662 do they shew any thing more than some Debates in the House of Commons? And at last an Address, an Answer by the King, a Reply of the Commons, and then the thing dies. Pray, my Lord, is a Transaction in the House of Commons, a Declaration of Parliament? Sure, I think, no one will affirm that any thing can be a Declaration of Parliament, unless he that is the Principal part concurs, who is the King: for if you speak of the Court of Parliament in a Legal Sense,
you

336 *The Tryal of the Seven Bishops.*

you must speak of the whole Body, King, Lords, and Commons, and a Declaration in Parliament must be by all the whole Body, and that is properly an Act of Parliament.

Why then they come to the Year 1672, where your Lordship observes, that the late King did insist upon his Right; for after the Dispute which was in 1662, his Majesty did issue out another Declaration, and when it comes to be debated in Parliament, he insists upon his Right in Ecclesiastical Matters, and though his Declaration was cancel'd, yet there is no formal Disclaimer of the Right.

My Lord, after all, how far these things that they have offer'd may work, as to the point that they have debated, I shall not now meddle with it, nor give your Lordship any Trouble about it, because it is not all pertinent to the Case in question, for I do (after all this Time and Pains that they have spent) take leave to say, That these Gentlemen have spent all this Time to no purpose.

L. Ch. Just. Yes, Mr. Attorney, I'll tell you what they offer, which it will lie upon you to give an Answer to: They would have you shew how this has disturbed the Government, or diminished the King's Authority.

Mr. Att. Gen. Whether a Libel be true or not, as to the matter of Fact, was it ever yet in any Court of Justice permitted to be made a Question, whether it be a Libel or not, or whether the Party be punishable for it? And therefore I wonder to hear these Gentlemen to say, that because it is not a false one, therefore 'tis not a Libel. Suppose a Man should speak scandalous Matter of any Noble Lord here, or of any of my Lords the Bishops, and a *Scandalum Magnatum* be brought for it, though that which is spoken has been true, yet it has been the Opinion of the Courts of Law, that the Party cannot

not justify it, by reason it tends to the disturbing of the Peace, to publish any thing that is Matter of Scandal: The only thing that is to be looked into, is, Whether there be any thing in this Paper that is Reflecting and Scandalous, and not whether it be true or no; for if any Man shall *Extra-judicially*, and out of a Legal Course and Way, reflect upon any of the great Officers of the Kingdom; nay, if it be but upon any inferior Magistrate, he is to be punished, and is not to make his Complaint against them, unless he do it in a proper way: A Man may petition a Judge, but if any Man in that Petition shall come and tell the Judge, Sir, you have given an illegal Judgment against me, and I cannot in Honour, Prudence, or Conscience, obey it; I do not doubt, nor will any Man, but that he that should so say would be laid by the Heels, though the Judgment perhaps might be illegal.

If a Man shall come to petition the King, as we all know the Council-Doors are throng'd with Petitioners every Day, and Access to the King by Petition is open to every Body, the most Inferior Person is allow'd to petition the King, but because he may do so, may he therefore suggest what he pleases in his Petition, shall he come and tell the King to his Face, what he does is illegal: I only speak this because they say, in this Case, his Majesty gave them Leave to come to him to deliver their Petition; but the King did not understand the Nature of their Petition, I suppose, when he said, he gave them Leave to come to him.

My Lord, for this Matter we have Authority enough in our Books, particularly there is the Case of *Wrenham* in my Lord *Hobart*, the Lord Chancellor had made a Decree against him, and he petitioned the King, that the Cause might be reheard, and in that Petition he complains of Injustice done him by

338 *The Tryal of the Seven Bishops.*

my Lord Chancellor, and he put into his Petition many reflecting things; this, my Lord, was punished as a Libel in the Star-Chamber: And, in that Book it was said, that though it be lawful for the Subject to petition the King against any Proceedings by the Judges, yet it must not be done with Reflections, nor with Words that turn to the Accusation or Scandal of any of the King's Magistrates or Officers, and the Justice of the Decree is not to be question'd in the Case; for there *Wrenham* in his defence would have opened the Particulars wherein he thought the Decree was unjust, but that the Court would not meddle with, nor would allow him to justify for such Illegality in the Decree: So in this Case, you are not to draw in question the Truth or Falseness of the Matter complain'd against, for you must take the way the Law has prescribed, and prosecute your Right in a Legal Course, and not by Scandal and Libelling.

My Lord, there is a great deal of Difference between not doing a thing that is commanded, if one be of Opinion that it is unlawful, and coming to the King with a Petition highly reflecting upon the Government, and with scandalous Expressions, telling him, Sir, you act illegally, you require of us that which is against Prudence, Honour, or Conscience, as my Lords the Bishops are pleased to do in this Petition of theirs. I appeal to any Lord here, that if any Man should give him such Language, either by Word of Mouth or Petition, whether he would bear it, without seeking Satisfaction and Reparation by the Law?

My Lord, there is no greater Proof of the Influence of this Matter than the Croud of this Day, and the Harangue that hath been made; is it not apparent that the taking this Liberty to canvass and dispute the King's Power and Authority, and to censure

The Tryal of the Seven Bishops. 339

sure his Actions, possess the People with strange Opinions, and raise Discontents and Jealousies, as if the free Course of Law were restrained, and Arbitrary Will and Pleasure set up instead of it.

My Lord, there is one thing that appears upon the Face of the Information, which shews this not to be the right Course, and if my Lords the Bishops had given themselves the opportunity of reading the Declaration seriously, they would have found in the end of the Declaration, that the King was resolved to call a Parliament in *November*; might not my Lords the Bishops have acquiesced under their Passive Obedience till the Parliament met? But nothing would serve them but this, and this must be done out of Parliament, for which there is no President can be shewn, and this must be done in such a manner, as your Lordship sees the Consequence of, by your Trouble of this Day.

There is one thing I forgot to speak to, they tell us, that it is laid Malicious and Seditious, and there is no Malice or Sedition found, we know very well, that that follows the Fact, those Things arise, by Construction of Law, out of the Fact. If the Thing be illegal, the Law says it is Seditious, a Man shall not come and say, he meant no harm in it: That was the Case of *Williams*, in his *Treasonable Book*: Says he, *I only intended to warn the King of the Danger approaching*; and concludes his Book with, *GOD Save the King*: But no Man will say, that a good *Preface* at the beginning, or a good *Prayer* at the end, should excuse Treason or Sedition in the Body of a Book. If I meet another Man in the Street, and kill him, though I never saw him in my Life, the Indictment is, that it was *ex Malitia Precogitata*, as it often happens, that a Person kills one he never had Acquaintance with before, and in *favorem vite*, if the Nature of the Fact be so, the Jury are permit-

ted to find according to the Nature of the Case; but, in strictness of Law, there is Malice imply'd. But, my Lord, I think these Matters are so common, and that is a Point that has been so often settled, that the form of the Indictment and Information must follow the Nature of the Fact, that I need not insist upon it; if the Act be unlawful, the Law supplies the Malice, and evil Intentions.

Mr. Solicit. Gen. My Lord, and Gentlemen of the Jury, I am of Council in this Case for the King, and I shall take Leave to proceed in this Method: First, I shall put the Case of my Lords the Bishops, and then consider the Arguments that have been used in their Defence, and answer them as much as is material to be answer'd, and then leave it to your Lordship and the Jury's Consideration, whether what has been said by these Gentlemen, weigh any thing in this Case.

First, my Lord, I take it for granted (and I think the Matter is pretty plain by this time, by my Lord *President's* Evidence, and their own Confession) that it is not to be disputed but this Paper was presented by these Lords to the King; I think there's no great difficulty in that matter at all; but I just touch upon it, because I would follow them in *their own* Method.

Then, my Lord, let us take this Case as it is, upon the Nature of the Petition, and the Evidence that they have given, and then let us see, whether that will justify the thing that is done: For the Business of Petitioning, I would distinguish and enquire, Whether my Lords the Bishops, out of Parliament, can present any Petition to the King. I do agree, that in Parliament the Lords and Commons may make Addresses to the King, signify their Desires, and make known their Grievances there, and there is no doubt, but that is a natural and proper way of Application. For, in the beginning of the Parli-
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The Tryal of the Seven Bishops. 341

ment there are Receivers of Petitions appointed, and upon Debates there are Committees appointed to draw up Petitions and Addresses; but to come and deduce an Argument, that because the Lords in Parliament have done thus, (there being such Methods of Proceedings usual in Parliaments) therefore my Lords the Bishops may do it out of Parliament, that is certainly a *Non sequitur*, no such Conclusion can be drawn from those Premises.

My Lord, I shall endeavour to lay the Fact before you as it really is, and then consider what is proper for the Court to take Notice of, as Legal Proof or Evidence: And I take it, all those Presidents that they have produced, of what the Lords did, and what the Commons did, in Parliament, is no Warrant for them to shelter themselves under against the Information here in Question.

[*Here Mr. Just. Powel spake aside to the L. Chief Justice, thus:*

Mr. J. Powel. My Lord, this is strange Doctrine; Shall not the Subject have liberty to petition the King, but in Parliament? If that be Law, the Subject is in a miserable case.

L. Ch. Just. Brother, let him go on, we will hear him out, tho' I approve not of his Position.

Mr. Sol. Gen. The Lords may address to the King in Parliament, and the Commons may do it, but therefore, that the Bishops may do it out of Parliament, does not follow. I heard nothing said that could have given Colour to such a thing, but the Curse that has been read in 1 *Elizabeth*.

But pray, my Lord, let us consider that Evidence they have given; they have begun with that Record in *Richard* the Second's time, and what's that? That the King may dispense with the Statute of

342 *The Tryal of the Seven Bishops.*

Provisors till the meeting of the next Parliament; and a Protestation of the Commons at the end of it, whether that be an Act of Parliament that is Declaratory of the Common Law, or Introductory of a new Law, *Non constat*; and for ought appears, it might be a Declaratory Act; and if so, it is a Proof of the King's Prerogative of Dispensing. It might be an Act in Affirmance of the King's Prerogative, as there are a great many such, we very well know; and generally most of the Laws in that kind are in Affirmance of the King's Power, so that the Law turns as an Argument for the King's Prerogative, and they have given him that, which will turn upon themselves: So it stood in *Richard* the Second's time; but whether that be an Argument one way or other Conclusive, is left to your Lordship and the Jury.

Ay, but (say they) there is no Execution of such a Power till very lately; and the first Instance that they produce, is that in the Year 1662. But your Lordship knows, that before the Reign of *Henry* the Fourth there was great Jurisdiction assumed by the Lords in Original Causes; then comes the Statute of Appeals, 1 *Hen. IV.* which takes notice, that before that time the Lords had assumed an Original Jurisdiction in all Causes, and would proceed and determine them in Parliament, and out of Parliament; and it fell out to be so great a Grievance, that it was thought necessary to make a Law against it, That Appeals in Parliament should be abolish'd and destroy'd; and then comes that Law in favour of the Subject of *England*, and that settles the Bounds between the King and the Lords in a great measure; before that time, the Lords were grown very powerful, and where there is a Power, there always will be Applications, and what is the Effect of that Statute 1 *Hen. IV.* for all that we endeavour
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is, to make things as plain as can be, that no further Applications, no Accusations, no Proceedings in any Case whatsoever be before the Lords in Parliament, unless it be by Impeachment of the Commons; so that there is the *Salvo*. And the Use that I make of it is this; The Commons, by that very Statute, did abolish the Power that the Lords had arrogated to themselves, and order'd, That they should not meddle with any Cause, but upon the Impeachment of the House of Commons; and establish the Impeachment of the Commons, which is as ancient as the Parliament, for that was never yet spoken against, the Power of the Commons impeaching any Person under the degree of the Prince, and that is the regular legal way; and so the Commons asserted their ancient Right, and whatsoever the Lords took notice of, must come by Application of the Commons; then Conferences were to pass between the Houses, and both Houses by Address apply to the King. This is the proper Way and Course of Parliament, of which my Lord *Coke* says, It is known to few, and practis'd by fewer, but it is a venerable, honourable Way: And this is the Course that should have been taken by my Lords here; they should have staid till the Complaint had come from the Commons in Parliament, and then it had been regular for them to address the King; but they were too quick, too nimble.

And whereas the Statute of *Hen. IV.* says, That no Lord whatsoever shall intermeddle with any Cause but by the Impeachment of the Commons, they interpose and give their Advice before their time: If there be any Irregularity in Parliament, or out of Parliament, the Commons are to make their Complaint of it; and a Man must not be his own Judge, nor his own Carver; nor must every Man create difficulties of his own, nor set upon petitioning

344 *The Tryal of the Seven Bishops.*

in this sort. But there I lay my Foundation, That in such a matter as this there ought to have been the Impeachment of the Commons in Parliament before these Lords could do any thing; and I know nothing can be said for the Bishops more than this, That they were under an *Anathema*, under the Curse that Sir *Robert Sawyer* speaks of, and for fear of that they took this irregular Course: But some would say, *Better fall into the Hands of G O D than of Men*; some would say so, (I say) I know not what they would say; but these being the Methods that these Lords should have taken, they should have pursued that Method, the *Law* should have carv'd out their Relief and Remedy for them, but they were for going by a new Fancy of their own.

My Lord, the Law continued thus, and was practis'd so, till 3 *Hen. VII.*, where the Grievance was found, that Offences in the Intervals of Parliament could not be well punish'd; then comes the Statute that sets up the Court of *Star-Chamber*, and there Men were often brought to Judgment and Punishment for their Sins; and tho' very great Power was given them, yet they arrogated to themselves a greater; and therefore that Court is abolish'd by the Statute of 15 *Car. I.* And what is the reason of abolishing that Statute? Because the *Star-Chamber* did not keep within their Bounds that the Law set 'em, but assum'd to themselves a larger Power than the Law would allow, and grew very exorbitant and very grievous to the Subject: And another reason was, which the Statute of 15 *Car. I.* founded it self upon, because there was nothing that was brought in Judgment before that Court, but might be reliev'd and remedied in the ordinary methods of Justice in the Courts of *Westminster-hall*: So that upon those two Considerations, because that Course was exorbitant, and because all the Sins and Misdemeanours that

that were punish'd there, might be punish'd in an ordinary way of Law in another Court, therefore there was no need of that Court, and so it was abolish'd, and the Subject was pretty safe. If there was a Crime committed here, a Man might come properly before your Lordship into this Court, and have it punish'd.

My Lord, they find fault with the Words in the Information, and they say, Why are these Words put in, *Seditious, Malicious*? If the Matter be libellous and seditious, we may lawfully say it, and it is no more than the Law speaks, it results out of the Matter itself; and, if it be a libellous Paper, the Law says it is *Maliciously* and *Seditiously* done: And these Gentlemen need not quarrel with us, for so are all the Informations in all times past, and 'tis no more than the *Vi & Armis*, which is common Form. It may be said, How can the publishing of a Libel be said to be done *Vi & Armis*? That is only a Supposition of Law; and they may as well object to the Conclusion of the Information, That it was *contra Coronam & Dignitatem Domini Regis*; if it be an illegal Thing, or a Libel, these are necessary Consequences, it is no more than the speaking of the Law upon the Fact.

But, my Lord, let us a little consider whether this Matter were Warrantable, and whether they had any Warrant to do what was done. They pretend it was done upon this account, That the King had set forth a Declaration, and had order'd them to read it, which to excuse themselves from, they make this *Petition*, or this *Libel*, (call it what you will) and they use this as the main Argument that they say the King has done illegally, and they tell the King plainly so, that it is *illegal*; for they take notice of this Declaration, and say it is illegal, because it is

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346 *The Tryal of the Seven Bishops.*

contrary to the Declarations of Parliament in 1662, 1672 & 1685.

Pray, my Lord, let us consider a little, whether there be any Declaration in Parliament that they have given Evidence of: Have they read any Declaration of the Parliament in 1662? What is a Declaration in Parliament but a Bill that is pass'd by the King, Lords, and Commons? That we know to be the meaning, and no other; if it pass the Commons 'tis no Declaration in Parliament; nay, if it pass the Lords and Commons, it is not a Declaration in Parliament, except it also pass the King; all these things are Nullities, and the Law takes no notice of them; we have it in our Books over and over, and no Court ought to suffer such Evidence to be given. I know these Gentlemen are very well acquainted with the Authority in *Fitz-Herbert's Title*, Parliament: There was an Act that was said to be by the King and the Lords, but because the Commons did not agree to it, 'tis declar'd and adjudg'd to be a Nullity, and the Court would take no notice of it; and, How can any Man call that a Declaration in Parliament which is only a Vote of the House of Commons, or of the Lords? No sure: That is one of the Heads I go upon, It's not a Declaration in Parliament, unless it be by Act of Parliament.

Indeed, my Lord, there is another sort of Declaration in Parliament before the Lords, as they are a Court of Judicature, and that is a fair Declaration too; for if any thing comes judicially before the Lords, either by Writ of Error, or by natural Appeal from any of the other Courts, or by Adjournment, and there be any Judgment given, that is a Declaration in Parliament, and may be fairly so called. So likewise there is another Judicial Declaration, which is, when any thing comes before the
Lords

Lords judicially, upon an Impeachment of the Commons, and they give Judgment upon that Impeachment, That is a Declaration in Parliament: But to say, that there is any other Declaration in Parliament, is to say more than these Gentlemen can make out; if they will shew me any such, I will submit to them, and not speak a Word against my Lords the Bishops; but if these learned Gentlemen cannot shew me any such, then they have not said that was true in this Petition, that it was so and so declar'd in Parliament.

For let us consider what there is in this Case upon this Evidence, for that in 1662 is only a Vote and an Opinion of the House of Commons, and I always understood, and have been told so by some of the Gentlemen of the other side, that such a Vote signifies nothing. But besides, it seems to be a mistaken Address; for they say in it, That the Declaration in 1662, which they address against, was the first Declaration of that sort, to suspend Laws without Act of Parliament; and yet, in the same breath, they do take notice of the King's Declaration from *Bredah*. But here's a mighty Argument used from the King's Speech, That because he wish'd he had such a Power, this must be declar'd in Parliament that he had no such Power. Is the Speech of the Prince a Declaration in Parliament? All the Speeches that were made upon the opening of the Parliament, will you say they are Declarations in Parliament? Then the Chancellor, or the Keeper's Speech, or the Lord Privy-Seal's, must be a Declaration in Parliament. Whoever speaks the Sense of the King, if he does not speak that which is Law and Right, is questionable for it, and several have been impeach'd for so doing; for, they look not upon it as the King's Speech, except it be according to Law: Nothing can turn upon the Prince but what is legal; if

348 *The Tryal of the Seven Bishops.*

if it be otherwise, it turns upon him that speaks it. I never did hear that a Speech made by the Chancellor (and I will appeal to all the Lords that hear me in it) was a Declaration in Parliament.

Then, my Lord, we come to the Business in 1672, which with that in 1662, and that in *Bredah*, shews, That this of the King's is not such a Novelty, but has been done often before. In 1672 the King was in distrefs for Money, being entangled in a Dutch War, and wanted Supply: He capitulates with his Commons, you have heard it read, and, upon the Commons Address, he asserts it to be his Right, and makes his Complaint to the Lords how the Commons had us'd him; for when he gives them a fair Answer, they reply, and there are Conferences with the Lords about it; but at length it all ends in a Speech by the King, who comes and tells them of his present Necessities, and so he was minded to remit a little at the Instigation of the Commons, and he has a good Lump of Money for it. Would this amount to a Declaration in Parliament? Can my Lords the Bishops fancy or imagine that this is to be impos'd upon the King, or upon the Court, for a Declaration in Parliament?

Then, last of all, for that in 1685, in this King's time, What is it? The Commons make an Address to the King, and complain to his Majesty of some

of his Officers in his Army, * that might pretend to have a Dispensation something of that nature, contrary to the Test-Act; And what is done upon it? They make their Application to the King, and the King answers them, and that is all: But since 'tis spoken of in
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* Here Mr. J. Powel speaks to the L. Ch. Justice.

Mr. J. Pow. My Lord, this is wide, Mr. Solicitor would impose upon us; let him make out, if he can, that the King has such a Power, and answer the Objections made by the Defendants Council.

L. Ch. Just. Brother, impose upon us! he shall not impose upon me, I know not what he may upon you; for my part, I do not believe one Word he says.

The Tryal of the Seven Bishops. 349

the Court, I would take notice, That it is very well known, by the Case of *Goddin* and *Hales*, the Judgment of this Court was against the Opinion of that Address.

But what sort of Evidence is all this? Would you allow all the Addresses of the House of Commons to be Evidence? Give me leave to say it, my Lord, If you suffer these Votes, these Copies of Imperfect Bills, these Addresses and Applications of one or both Houses to the King, to be Evidence and Declarations in Parliament, then what will become of the *Bill of Exclusion?

Shall any-body mention that

* Here there was a great hissing.

Bill of Exclusion to be a Declaration in Parliament? If so, then there is Declaration against Declaration, the Declaration of the Commons against the Declaration of the Lords. I know not what Judgment my Lords the Bishops may be of now, concerning those things of Votes and Addresses being Declarations in Parliament, but I am sure they have spoken against it heretofore; nay, I am sure, some of them have preach'd against it.

And if my Lords the Bishops have said, These are Declarations in Parliament, and they are not Declarations in Parliament; and if they accuse the King of having done an illegal thing, because he has done that which has been declar'd in Parliament to be illegal, when it was never so declar'd, then the Consequence is very plain, That they are mistaken sometimes; and, I suppose, by this time they believe it.

I dare say, it will not be deny'd me, That the King may, by his Prerogative Royal, issue forth his Proclamation; it is as essential a Prerogative as it is to give his Assent to an Act of Parliament to make it a Law. And it is another Principle, which I think

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350 *The Tryal of the Seven Bishops.*

cannot be deny'd, That the King may make Constitutions and Orders in Matters Ecclesiastical; and that these he may make out of Parliament, and without the Parliament. If the King may do so, and these are his Prerogatives, then suppose the King does issue forth his Royal Proclamation (and such in Effect is this Declaration under the Great Seal) in a Matter Ecclesiastical, by vertue of his Prerogative Royal, and this Declaration is read in the Council, and publish'd to the World, and then the Bishops come and tell the King, Sir, you have issued out an illegal Declaration, being contrary to what has been declared in Parliament; when there is no Declaration in Parliament: Is not this a diminishing the King's Power and Prerogative in issuing forth his Declaration, and making Constitutions in Matters Ecclesiastical? Is not this a questioning of his Prerogative? Do not my Lords the Bishops in this Case raise a Question between the King and the People? Do not they (as much as in them lies) stir up the People to Sedition? For, who shall be Judge between the King and the Bishops? (Says the King) I have such a Power and Prerogative to issue forth my Royal Proclamation, and to make Orders and Constitutions in Matters Ecclesiastical, and that without the Parliament, and out of Parliament: Say my Lords the Bishops, You have done so, but you have no Warrant for it. Says the King, Every Prince has done it, and I have done no more than what is my Prerogative to do: But this, say the Bishops, is against Law. How shall this be try'd? Should not the Bishops have had the Patience to have waited till a Parliament came, when the King himself tells them, he would have a Parliament in *November* at furthest?

L. Ch. Just. Pray, Mr. *Sollicitor*, come close to the Business, for it is very late.

Mr.

The Tryal of the Seven Bishops. 351

Mr. Sol. Gen. My Lord, I beg your Patience ; you have had a great deal of Patience with them, pray spare me a little. I am saying, when the King himself tells them, that he would have a Parliament in *November* at furthest, yet they have no Patience to stay till *November*, but make this Application to him. Is not this raising a Question upon the King's Prerogative in issuing forth Declarations, and upon the King's Power and Right in Matters Ecclesiastical ? And when I have said this, that my Lords the Bishops have so done : If they have raised a Question upon the Right of the King, and the Power of the King in Matters Ecclesiastical, then they have stir'd up Sedition. That they have so done is pretty plain ; and for the Consequence of it, I shall appeal to the Case in the 2 *Cro.* 2. *Jac.* 1. That is a plain direct Authority for me.

Mr. Just. Powel. Nay, *Mr. Solicitor*, we all very well know, to deny the King's Authority in Temporals and Spirituals, as by Act of Parliament, is High-Treason.

Mr. Sol. Gen. I carry it not so far, Sir ; we have a Gracious Prince, and my Lords the Bishops find it so by this Prosecution : But, what says that Case, it is Printed in three Books, in *Noy* 100. in *Moor* 375. and in *Mr. Just. Cro.* 371. Says that Case, The King may make Orders and Constitutions in Matters Ecclesiastical.

Mr. Just. Powel. But, how will you apply that Case to this in hand, *Mr. Solicitor* ?

Mr. Sol. Gen. I will apply it by and by, Sir. I would first shew what it is ; there is a Convention of the greatest Men in the Kingdom.

Mr. Just. Powel. Indeed, *Mr. Solicitor*, you shoot at Rovers.

Mr. Sol. Gen. There is the Lord Privy-Seal, the Archbishop of *Canterbury*, and a great many others ;
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352 *The Tryal of the Seven Bishops.*

it is the greatest Assembly we meet with in our Books, and all of them are of this Opinion, That the King may make Orders and Constitutions in Matters Ecclesiastical.

My Lord, there is another Authority, and that is from the Statute 1 *Eliz.* which erected the High-Commission Court, and that Statute was not Introductory of a New Law, but Declaratory of the Old Law. The King by his Proclamation declares his Sense, to do such and such a thing; the Court, and all Persons there, give their Judgment and Opinion upon that Statute, That they look'd upon it as the grossest Thing, and the foulest Affront to the Prince, for any Man to bring into question that Power of the King in Matters Ecclesiastical; 'tis said to be a very High Crime. Why then, my Lord, what is done in this Case?

Mr. Just. *Powel.* Mr. Solicitor, pray when you are applying, apply that other part of the Case too, which says, That it was a heinous Offence to raise a Rumour, that the King did intend to grant a general Toleration; and, Is there any Law since that has changed it, Mr. Solicitor?

Mr. Sol. *Gen.* In the main, Judgment goes another way: As for that part, it was personal to the Prince that then was, of whom they had scandalously reported, that he intended to do such a thing; they look'd upon it as a Scandal to King *James*, that it was a sowing Sedition, and stirring up People against the Government; and that will come up to our Case; for as some Men do it on the right side, others do it on the left; and whoever he be that endeavours to bring a dislike of the King in the People, that is moving Sedition against the Prince, but that is Personal, to the Prince himself, and does not go to his Successors.

Now,

The Tryal of the Seven Bishops. 353

Now, my Lord, I come to that which is very plain from the Case of *De Libellis Famosis*; If any Person, in any Paper, have slander'd the Government, you are not to examine who is in the Right, and who is in the Wrong; whether what they said to be done by the Government be legal or no; but whether the Party have done such an Act. If the King have a Power (for still I keep to that) to issue forth Proclamations to his Subjects, and to make Orders and Constitutions in Matters Ecclesiastical; if he do issue forth his Proclamation, and make an Order upon the Matters within his Power and Prerogative; and if any one would come and bring that Power in question, I say, that is Sedition, and you are not to examine the Legality or Illegality of the Order or Proclamation: And that I think is very plain upon that Case, in the Fifth Report, for it says, If a Person does a thing that is Libellous, you shall not examine the Fact, but the Consequence, whether it tended to stir up Sedition against the Publick, or to stir up Strife between Man and Man; in the Case of private Persons, as if a Man should say of a Judge, He has taken a Bribe, and I will prove it: This is not to be sent in a Letter, but they must take a regular way to prosecute it according to Law.

If it be so in the Case of an inferior Magistrate, what must it be in the Case of a King, to come to the King's Face and tell him (as they do here) that He has acted illegally, doth certainly sufficiently prove the Matter to be Libellous. What do they say to the King? They say, and admit, That they have an averfeness for the Declaration, and they tell him from whence that averfeness doth proceed; and yet they insinuate, that they had an Inclination to gratifie the King, and embrace the Dissenters, that were as averse to them as could be, with due

354 *The Tryal of the Seven Bishops.*

Tenderness, when it should be settled by Parliament and Convocation: Pray, what hath their Convocation to do in this matter?

L. Ch. Just. Mr. Solicitor-General, I will not interrupt you; but pray come to the Business before us: Shew us that this is in diminution of the King's Prerogative, or that the King ever had such a Prerogative.

Mr. Sol. Gen. I will, my Lord; I am observing what it is they say in this Petition—— They tell the King, it is inconsistent with their Honour, Prudence, and Conscience to do what he would have them to do; and if these things be not reflective upon the King and Government, I know not what is; this is not in a way of Judicature, possibly it might have been allowable to petition the King to put it into a Course of Justice, whereby it might be Try'd; but, alas! there is no such thing in this matter.

It is not their Desire to put it into any method for Tryal, and so it comes in the Case *de Libellis Famosis*; for, by this way, they make themselves Judges, which no Man by Law is permitted to do. My Lords the Bishops have gone out of the way, and all that they have offer'd does not come home to justify them; and therefore I take it, under favour, that we have made it a good Case for the King: We have prov'd what they have done, and whether this be warrantable or not, is the Question, Gentlemen, that you are to try.

The whole Case appears upon Record; the Declaration and Petition are set forth, and the Order of the King and Council. When the Verdict is brought in, they may move any thing, what they please, in Arrest of Judgment: They have had a great deal of Latitude, and taken a great deal of Liberty, but truly, I apprehend, not so very pertinently:

The Tryal of the Seven Bishops. 355

nently: But, I hope, we have made a good Case of it for the King, and that you, Gentlemen, will give us a Verdict.

Mr. Just. *Holloway*. Mr. *Sollicitor*, there is one thing I would feign be satisfied in; you say the Bishops have no Power to Petition the King,

Mr. *Sol. Gen.* Not out of Parliament, Sir.

Mr. Just. *Holloway*. Pray give me leave, Sir; Then the King having made such a Declaration of a General Toleration and Liberty of Conscience, and afterwards he comes and requires the Bishops to disperse this Declaration; this they say, out of a tenderness of Conscience, they cannot do, because they apprehend it contrary to Law, and contrary to their Function? What can they do, if they may not Petition?

Mr. *Sol. Gen.* I'll tell you what they should have done, Sir. If they were commanded to do any thing against their Consciences, they should have acquiesced till the Meeting of the Parliament.

[*At which some People in the Court hissed.*]

Mr. *Att. Gen.* This is very fine, indeed! I hope the Court, and the Jury will take notice of this Carriage.

Mr. *Sol. Gen.* My Lord, It is one thing for a Man to Submit to his Prince, if the King lay a Command upon him that he cannot Obey, and another thing to Affront him. If the King will impose upon a Man what he cannot do, he must acquiesce: But shall he come and fly in the Face of his Prince? Shall he say it is Illegal, and, that the Prince acts against Prudence, Honour, or Conscience? And throw Dirt in the King's Face? Sure that is not to be permitted; that is Libelling with a Witness!

356 *The Tryal of the Seven Bishops.*

L. Ch. Just. Truly, *Mr. Solicitor*, I am of Opinion, that the Bishops might Petition the King, but this is not the right way of bringing it; I am not of that Mind, that they cannot Petition the King out of Parliament, but if they may Petition, yet they ought to have done it after another manner: For if they may in this Reflective way Petition the King, I am sure, it will make the Government very precarious.

Mr. Just. Powel. *Mr. Solicitor*, it would have been too late to stay for a Parliament, for it was to have been distributed by such a time.

Mr. Sol. Gen. They might have lain under it, and submitted.

Mr. Just. Powel. No, they would have run into Contempt of the King's Command, without Petitioning the King not to insist upon it; and if they had Petitioned, and not have shewn the Reason why they could not Obey, it would have been looked upon as a piece of Sullenness, and that they would have been blamed for, as much on the other side.

Mr. Serj. Baldock. After so long a Debate, I shall not trouble you long, most things that are to be said have been said, but I shall only say this in short; I cannot deny, nor shall not, but that the Subject has a Right to Petition, but I shall affirm it also, he has a Duty to Obey; and, that in this Case, the Power of the King to Dispense with Penal Laws in Matters Ecclesiastical, is not a thing that is now in Question, nor need we here have had these long Debates on both sides: It may be perceived plainly, by the Proofs that have been read, that the Kings and Princes have thought themselves that they had such a Power, though, it may be, the Parliament thought they had not; and therefore the Declarations of the one, or the other, I shall not

The Tryal of the Seven Bishops. 357

not meddle with in this Case. That Power it self which the King has, as King of this Realm, in Matters rather Ecclesiastical and Criminal, than Matters of Property, may somewhat appear by what has been read before your Lordship; but all this will be nothing in our Case, neither has his Majesty now depended so much upon this thing: The Declaration has been read to you; and what's there said? The King there says, That for those Reasons he was ready to Suspend those Laws; And be they Suspended? Yet, my Lord, with this too, That he refers it to, and hopes to make it secure by, a Parliament: So that there being this, it has not gone, I think, very far; and, it not having been touch'd here, it is not a point of Duty in my Lords the Bishops, as Bishops, that's here enquired into; Whether they should have meddled with this or no, in this manner, is the Question. That the King is Supreme over all of us, and has a particular Supremacy over them, as Supreme Ordinary, and Governor, and Moderator of the Church, is very plain: And, my Lord, it is as plain, that in such things as concern the Church, he has a particular Power to Command them; this is not unknown, but very frequent and common in Matters Ecclesiastical, and Matters of State; It is not here a Question now, whether these Declarations which they were Commanded to take Care of getting read, were Legal, or not Legal; what Prudence there was, what Honour there was, what Conscience there was, for their not reading it, is not the Question neither: But the point was, the King as Supreme Ordinary of his Kingdom, to whom the Bishops are Subject, does in Council Order; And what is it he Orders? Their sending out and distributing his Declaration; they were concerned in no more than that, and it had

358 *The Tryal of the Seven Bishops.*

been a very pretty thing, a small thing, to send out the King's Declaration to be read by the Clergy: All the Clergy were Ordered to read it, but my Lords the Bishops were only Commanded to distribute it; this he might do by vertue of his Power Ecclesiastical. And if this be not an Evil in it self, and if it be not against the Word of God, certainly Obedience was due from my Lords the Bishops: Active Obedience was due from them to do so much as this; it was no Consent of theirs, it was no Approbation of theirs, of what they read, that was required. So that if they had read it, or another had read it, by the King's Order, especially if that Order be Legal, they are bound to do it by vertue of their Obedience, and not to Examine more.

And, my Lord, in this Petition, here they come to relieve, not only themselves that were present, (for I speak to the Preamble, as others before me have spoke to the Conclusion) but they do involve the rest of the Bishops that were absent; for it is in behalf of themselves, and their Brethren, and all the Clergy of that Province. Now that all these should joyn in the Petition, is a thing very uncertain; how does it construe here, whether they were altogether, and consented to it, or how all their Minds could be so fully known, that they would be all involved in the Disobedience to this Order of the King. Then, my Lord, What is the Thing they are greatly averse to? There are two Things required in the Order, The Bishops required to Distribute the Declaration to the Inferior Clergy; and the Inferior Clergy are required to Read it. Then their Averseness must be to Distribute it, and the others to Read it, and so they will be involved; none of whom did ever appear to have joyned in it. And then they give Reasons for their
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Averseness ; and it is true, Reasons might have been given, and good Reasons should be given, why they would not do this in Duty to His Majesty ; more gentle Reasons, and other kind of Reasons, than those that they have given.

L. Ch. Just. Pray, Brother, will you come to the Matter before us.

Mr. Serj. Baldock. I have almost done, my Lord.

Mr. Just. Powel. The Information is not for Disobedience, Brother, but for a Libel.

Mr. Serj. Baldock. No, Sir, it is not for Disobedience, but it is for giving Reasons for the Disobedience in a Libellous Petition ; and I am going on to that. The Declaration is said, in the Petition, to be illegal, which is a Charge upon the King, That he has done an illegal Act. They say, they cannot in Honour, Conscience, or Prudence do it ; which is a Reflection upon the Prudence, Justice, and Honour of the King, in commanding them to do such a thing ; and this appearing to have been deliver'd to the King by my Lords the Bishops, Persons to whom certainly we all owe a Deference, as our Spiritual Masters, to believe what things they say, as most likely to be true ; and, therefore it having an Universal Influence upon all the People, I shall leave it here to your Lordship and the Jury, whether they ought not to Answer for it.

Mr. Recorder. Will your Lordship please to spare me one Word ?

L. Ch. Just. I hope we shall have done by and by.

Mr. Recorder. If your Lordship don't think fit, I can sit down.

L. Ch. Just. No, no, go on, Sir *Barth. Shore*, you'll say I have spoiled a good Speech.

Mr. Recorder. I have no good one to make, my Lord, I have but a very few Words to say.

L. Ch. Just. Well, go on, Sir.

360 *The Tryal of the Seven Bishops.*

Mr. *Recorder*. That which I would urge, my Lord, is only this : I think, my Lord, we have proved one Information, and that they have made no Answer to it ; for the Answer they have made, is but Argumentative, and taken either from the Persons of the Defendants, as Peers, or from the form of its being a Petition : As Peers, it is said, they have a Right to petition to, and advise the King ; but that is no Excuse at all, for if it contains Matter reproachful or scandalous, it is a Libel in them, as well as in any other Subject ; and they have no more Right to Libel the King than his Majesty's other Subjects have ; nor will the Privilege of their Peerage exempt them from being punished. And for the form of this Paper, as being a Petition, there is no more Excuse in that neither, for every Man has as much Right to publish a Book or Pamphlet, as they had to present their Petition. And as it would be punishable in that Man to write a Scandalous Book, so it would be punishable in them to make a Scandalous and a Libellous Petition. And the Author of *Julian the Apostate*, because he was a Clergyman, and a Learned Man too, had as much Right to publish his Book, as my Lords the Bishops had to deliver this Libel to the King. And if the City of *London* were so severely punished, as to lose their Charter, for petitioning for the Sitting of a Parliament, in which there were reflecting Words, but more soft.——

Mr. *Justice Holloway*. Pray, good Mr. *Recorder*, don't compair the Writing of a Book to the Making of a Petition ; for it's the Birth-right of the Subject to Petition.

Mr. *Recorder*. My Lord, it was as lawful for the City of *London* to petition for the Sitting of a Parliament, as it was for my Lords the Bishops to give Reasons for their Disobedience to the King's Command :

The Tryal of the Seven Bishops. 361

mand: And if the Matter of the City of *London's* Petition was reckon'd to be Libellous, in saying, That what the King had done in dissolving the Parliament, was an Obstruction of Justice, what other Construction can be made of my Lords the Bishops saying, That the King's Declaration is illegal? And if the Matter of this Petition be of the same Nature with that of the City of *London*, your Lordship can make no other Judgment of it, but that it ought to have the same Condemnation.

Mr. *Just. Powel*. Mr. *Recorder*, you will as soon bring the two Poles together, as make this Petition to agree with *Johnson's* Book; they are no more alike than the most different things you can name.

Mr. *Serj. Trinder*. My Lord, I have but one Word.

L. *Ch. Just*. How unreasonable is this now, that we must have so many Speeches at this time of Day? But we must hear it; go on, Brother.

Mr. *Serj. Trinder*. My Lord, if your Lordship pleases, That which they seem most to insist upon on the other side, and which has not been much spoken to on our side, is, That this Power which his Majesty has exerted, in setting forth his Declaration, was illegal, and their Arguments were Hypothetical; if it were illegal, they had not offended; and they offer'd at some Arguments to prove it illegal: But as to that, my Lord, we need not go much further, than a Case that is very well known here, which I crave Leave to mention, only because the Jury, perhaps, have not heard of it; and that was the Case of Sir *Edward Hales*, where, after a long Debate, it was Resolved, That the King had a Power to dispense with *Penal Laws*.

But, my Lord, if I should go higher into our Books of Law, that which they seem to make so strange of, might easily be made appear to have been a frequent and constant Practice.—

L. *Ch*.

362 *The Tryal of the Seven Bishops.*

L. Ch. Just. That is quite out of the Case, Brother.

Mr. Serj. Trinder. I beg your Lordship's Favour for a Word or two; if your Lordship please to consider the Power the King has, as Supreme Ordinary, we say, he has a Power to dispense with these Statutes, as he is King, and to give Ease to his Subjects, as Supreme Ordinary of the whole Kingdom, and as having Supreme Ecclesiastical Authority throughout the Kingdom. There might be abundance of Cases cited for this, if there were need; the Statute of *primo Eliz.* doubtless is in Force at this time, and a great many of the *Statutes* made since that time, have express Savings of the King's Supremacy; so that the King's Power is unquestionable: And if they have come and questioned this Power in this manner, by refering themselves to the Declarations in Parliament, they have done that, which of late Days has been always looked upon as an ill thing, as if the King's Authority was under the Suffrages of a Parliament. But when they come to make out their Parliament-Declarations, there was never a one, unless it be first in *Richard* the Second's Time, that can properly be a Parliament-Declaration; so that that of the several Parliaments is a Matter perfectly mistaken; and if they have mistaken it, it is in the nature of false News, which is a Crime, for which the Law will punish them. More Things might be added, but I consider your Lordship has had a great deal of Patience already, and much time has been spent, and therefore I shall conclude, begging your Lordship's Pardon for what I have said.

L. Ch. Just. I do assure you, if it had not been a Case of great Concern, I would not have heard you so long: It is a Case of very great Concern to the King and Government on the one side, and to my Lords the Bishops on the other; and I have taken
all

The Tryal of the Seven Bishops. 363

all the Care I can to observe what has been said on both sides. 'Tis not to be expected that I should repeat all the Speeches, or the particular Facts, but I will put the Jury in mind of the most Material Things, as well as my Memory will give me Leave; but I have been interrupted by so many Long and Learned Speeches, and by the length of the Evidence which has been brought in, in a very broken, unmethodical way, that I shall not be able to do so well as I would.

Gentlemen, thus stands the Case: 'Tis an Information against my Lords the Bishops, his Grace my Lord of *Canterbury*, and the other six Noble Lords, and 'tis for Preferring, Composing, Making, and Publishing, and Causing to be Publish'd, a Seditious Libel; the Way that the Information goes is Special, and it sets forth, That the King was graciously pleas'd, by his Royal Power and Prerogative, to set forth a Declaration of Indulgence for Liberty of Conscience, in the Third Year of his Reign; and afterwards, upon the 27th of *April*, in the Fourth Year, he comes and makes another Declaration; and afterwards, in *May*, orders in Council, That this Declaration should be publish'd by my Lords the Bishops in their several Diocesses; and after this was done, my Lords the Bishops come and present a Petition to the King, in which were contain'd the Words which you have seen.

Now, Gentlemen, the Proofs that have been upon this, you'll see what they are: The two Declarations are prov'd by the Clerks of the Council, and they are brought here under the Great Seal; a Question did arise, whether the Prints were the same with the Original Declarations, and that is prov'd by *Hills*, or his Man, that they were examin'd, and are the same: Then the Order of Council was produced by Sir *John Nicholas*, and has likewise been
read

364 *The Tryal of the Seven Bishops.*

read to you : Then they come to prove the Fact against the Bishops, and first they fall to proving their Hands; they begun indeed a great way off, and did not come so close to it as they afterwards did, for some of their Hands they could hardly prove, but my Lord Archbishop's Hand was only prov'd, and some others, but there might have been some Question about that Proof; but afterwards it came to be prov'd, that my Lords the Bishops own'd their Hands, which if they had produced at first, 'twould have made the Cause something shorter than it was.

The next Question that did arise, was about the Publishing of it, Whether my Lords the Bishops had Publish'd it; and it was insisted upon, That nobody could prove the Delivery of it to the King: It was prov'd the King gave it to the Council, and my Lords the Bishops were call'd in, and there they acknowledg'd their Hands, but no-body could prove how it came to the King's Hands: Upon which we were all of Opinion, That it was not such a Publishing as was within the Information; and I was going to have directed you to find my Lords the Bishops Not Guilty, but it happen'd that being interrupted in my Directions by an Honest, Worthy, Learned Gentleman, the King's Council took the Advantage, and informing the Court that they had further Evidence for the King, we staid till my Lord President came, who told us how the Bishops came to him to his Office at *White-hall*, and after they had told him their Design, That they had a mind to petition the King; they ask'd him the Method they were to take for it, and desir'd him to help them to the Speech of the King; and he tells them, he will acquaint the King with their Desire, which he does; and the King giving Leave, he comes down and tells the Bishops, that they might

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The Tryal of the Seven Bishops. 365

go and speak with the King when they would, and (says he) I have given Direction that the Door shall be open'd for you as soon as you come. With that the Two Bishops went away, and said, They would go and fetch their other Brethren; and so they did bring the other Four, but my Lord Archbishop was not there; and immediately when they came back, they went up into the Chamber, and there a Petition was deliver'd to the King. He cannot speak to that particular Petition, because he did not read it, and that is all that he knew of the matter; only it was all done the same Day, and that was before my Lords the Bishops appear'd at the Council.

Gentlemen, after this was prov'd, then the Defendants came to their Part; and these Gentlemen that were of Council for my Lords let themselves into their Defence by notable learned Speeches, by telling you, that my Lords the Bishops are Guardians to the Church, and great Peers of the Realm, and were bound in Conscience to take care of the Church. They have read you a Clause of a Statute made in Queen *Elizabeth's* time, by which they say, my Lords the Bishops were under a Curse, if they did not take care of that Law. Then they shew you some Records, one in *Richard* the Second's time, which they could make little of, by reason their Witnesses could not read it; but it was, in short, a Liberty given to the King to dispense with the Statute of Provisors. Then they shew you some Journals of Parliament; first in the Year 1662, where the King had granted an Indulgence, and the House of Commons had declar'd it was not fit to be done, unless it were by Act of Parliament: And they read the King's Speech, wherein he says, *He wish'd he had such a Power*; and so likewise that in 1672, which is all nothing but Addresses and Votes, or Orders of the House, or Discourses, either

366 *The Tryal of the Seven Bishops.*

ther the King's Speech, or the Subject's Addresſes; but theſe are not Declarations in Parliament that is inſiſted on by the Council for the King, That what is a Declaration in Parliament is a Law, and that muſt be by the King, Lords, and Commons: The other is but common Diſcourſe, but a Vote of the Houſe, or a Signification of their Opinion, and cannot be ſaid to be a Declaration in Parliament. Then they come to that in 1685, where the Commons take notice of ſomething about the Soldiers in the Army that had not taken the Teſt, and make an Addreſs to the King about it; but in all theſe things (as far as I can obſerve) nothing can be gather'd out of them one way or other, 'tis all nothing but Diſcourſes. Sometimes this Diſpenſing Power has been allow'd, as in *Richard* the Second's time; and ſometimes it has been deny'd, and the King did once wave it; Mr. Sollicitor tells you the Reason, There was a *Lump of Money* in the Caſe; But I wonder indeed to hear it come from him.

Mr. Sol. Gen. My Lord, I never gave my Vote for Money, I aſſure you.

L. Ch. Juſt. But thoſe Conceſſions which the King ſometimes makes for the Good of the People, and ſometimes for the Profit of the Prince himſelf, (but I would not be thought to diſtinguiſh between the Profit of the Prince and the Good of the People, for they are both one, and what is the Profit of the Prince is always for the Good of the People;) but, I ſay, thoſe Conceſſions muſt not be made Law, for that is reſerv'd in the King's Breſt, to do what he pleaſes in it at any time.

The Truth of it is, the Diſpenſing Power is out of the Caſe, 'tis only a Word uſed in the Petition; but truly I will not take upon me to give my Opinion in the Queſtion, to determine that now, for it is not before me: The only Queſtion before me is,
and

and so 'tis before you, Gentlemen, it being a Question of Fact, Whether here be a certain Proof of a Publication? And then the next Question is a Question of Law indeed, Whether, if there be a Publication prov'd, it be a Libel?

Gentlemen, upon the point of a Publication, I have summ'd up all the Evidence to you, and if you believe that the Petition which these Lords presented to the King was this Petition, truly I think that is a Publication sufficient; if you do not believe it was this Petition, then my Lords the Bishops are not guilty of what is laid to their Charge in this Information, and consequently there needs no Enquiry whether they are guilty of a Libel: But if you do believe that this was the Petition they presented to the King, then we must come to enquire whether this be a Libel.

Now, Gentlemen, any thing that shall disturb the Government, or make Mischief and a Stir among the People, is certainly within the Case of *Libellus Famosus*; and I must in short give you my Opinion, I do take it to be a Libel. Now, this being a point of Law, if my Brothers have any thing to say to it, I suppose they will deliver their Opinions.

Mr. Just. *Holloway*. Look you, Gentlemen, 'tis not usual for any Person to say any thing after the Chief-Justice has summ'd up the Evidence, 'tis not according to the Course of the Court; but this is a Case of an extraordinary nature, and there being a point of Law in it, 'tis fit every-body should deliver their own Opinion: The Question is, Whether this Petition of my Lords the Bishops be a Libel, or no. Gentlemen, the End and Intention of every Action is to be consider'd; and likewise in this Case we are to consider the Nature of the Offence that these Noble Persons are charg'd with; it is for delivering a Petition, which, according as they have made

368 *The Tryal of the Seven Bishops.*

made their Defence, was with all the Humility and Decency that could be ; so that if there was no ill Intent, and they were not (as it is nor can be pretended they were) Men of Evil Lives, or the like, to deliver a Petition cannot be a Fault, it being the Right of every Subject to Petition : If you are satisfied there was an ill Intention of Sedition, or the like, you ought to find them Guilty ; but if there be nothing in the Case that you find, but only that they did deliver a Petition to save themselves harmless, and to free themselves from Blame, by shewing the Reason of their Disobedience to the King's Command, which they apprehended to be a Grievance to them, and which they could not in Conscience give Obedience to ; I cannot think it is a Libel : It is left to you, Gentlemen, but that is my Opinion.

L. Ch. Just. Look you, by the way, Brother, I did not ask you to sum up the Evidence, (for that's not usual) but only to deliver your Opinion, Whether it be a Libel, or no.

Mr. Just. Powel. Truly I cannot see, for my part, any thing of Sedition, or any other Crime, fix'd upon these Reverend Fathers my Lords the Bishops.

For, Gentlemen, to make it a Libel it must be False, it must be Malicious, and it must tend to Sedition ; as to the Falshood, I see nothing that is offered by the King's Council, nor any thing as to the Malice : It was preferr'd with all the Humility and Decency that became the King's Subjects to approach their Prince with.

Now, Gentlemen, the Matter of it is before you ; you are to consider of it, and it is worth your Consideration, they tell his Majesty, It is not out of averseness to pay all due Obedience to the King, nor out of a want of Tenderness to their dissenting Fellow-Subjects, that made them not perform the

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The Tryal of the Seven Bishops. 369

Command imposed upon them ; but they say, That because they do conceive, that the thing that was Commanded them was against the Law of the Land, therefore they do desire his Majesty, that he would be pleased to forbear to insist upon it, that they should perform that Command which they take to be Illegal.

Gentlemen, we must consider what they say is Illegal in it ; they say, they apprehend the Declaration is Illegal, because it is founded upon a Dispensing Power, which the King claims, to dispense with the Laws concerning Ecclesiastical Affairs.

Gentlemen, I do not remember in any Case in all our Law, and I have taken some Pains upon this Occasion to look into it, that there is any such Power in the King, and the Case must turn upon that, in short ; If there be no such Dispensing Power in the King, then that can be no Libel which they presented to the King, which says, that the Declaration, being founded upon such a pretended Power, is Illegal.

Now, Gentlemen, this is a Dispensation with a Witness ! it amounts to an Abrogation and utter Repeal of all the Laws ; for I can see no difference, nor know of none in Law, between the King's Power to dispense with Laws Ecclesiastical, and his Power to dispense with any other Laws whatsoever : If this be once allowed of, there will need no Parliament, all the Legislature will be in the King ; which is a thing worth considering, and I leave the issue to God and your Consciences.

Mr. Just. *Allybone*. The single Question that falls to my share, is, to give my Sense of this Petition, whether it shall be in Construction of Law a Libel in it self, or a thing of great Innocence ; I shall endeavour to express my self in as plain Terms as I can, and as much as I can by way of Proposition.

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And,

370 *The Tryal of the Seven Bishops.*

And, I think, in the first place, That no Man can take upon him to write against the actual Exercise of the Government, unless he have leave from the Government, but he makes a Libel, be what he writes true or false ; for if once we come to impeach the Government by way of Argument, 'tis the Argument that makes it the Government, or not the Government: So that I lay down that in the first place, That the Government ought not to be impeached by Argument, nor the Exercise of the Government shaken by Argument, because I can manage a Proposition in it self doubtful, with a better Pen than another Man: This, say I, is a Libel.

Then I lay down this for my next Position, That no private Man can take upon him to write concerning the Government at all ; for what has any private Man to do with the Government, if his Interest be not stirred or shaken ? It is the business of the Government to manage Matters relating to the Government ; it is the business of Subjects to mind only their own Properties and Interest: If my Interest is not shaken, what have I to do with Matters of Government ? They are not within my Sphere: If the Government does come to shake my particular Interest, the Law is open for me, and I may redress my self by Law: And when I intrude my self into other Mens Business, that does not concern my particular Interest, I am a Libeller.

These I have laid down for plain Propositions ; now then let us consider further, Whether, if I will take upon me to contradict the Government, any specious Pretence that I shall put upon it shall dress it up into another Form, and give it a better Denomination ; and truly I think it will not, I think 'tis the worse, because it comes in a better Dress ; for by that Rule, every Man that can put on a good Vizard,

The Tryal of the Seven Bishops. 371

Vizard, may be as Mischievous as he will to the Government at the bottom: So that whether it be in the form of a Supplication, or an Address, or a Petition, if it be what it ought not to be, let us call it by its true Name, and give it its right Denomination, It is a Libel.

Then, Gentlemen, Consider what this Petition is: This is a Petition relating to something that was done and order'd by the Government. Whether the Reasons of the Petition be true or false, I will not examine that now, nor will I examine the Prerogative of the Crown, but only take Notice that this relates to the Act of the Government: The Government here has publish'd such a Declaration as this, that has been read, relating to Matters of Government: And shall, or ought, any-body to come and impeach that as illegal which the Government has done? Truly, in my Opinion, I do not think he should, or ought; for by this Rule may every Act of the Government be shaken, when there is not a Parliament *de Facto* sitting.

I do agree, That every Man may petition the Government, or the King, in a Matter that relates to his own private Interest; but to meddle with a Matter that relates to the Government, I do not think my Lords the Bishops had any Power to do more than any others: When the House of Lords and Commons are in being, it is a proper way of applying to the King, there is all the openness in the World, for those that are Members of Parliament, to make what Addresses they please to the Government, for the rectifying, altering, regulating, and making of what Law they please; but if every private Man shall come and interpose his Advice, I think, there can never be an end of advising the Government: I think there was an instance of this in King *James's* Time, when, by a Solemn

372 *The Tryal of the Seven Bishops.*

Resolution, it was declar'd to be a High Misdemeanour, and next to Treason, to petition the King to put the Penal Laws in Execution.

Mr. Just. *Powel*. Brother, I think you do mistake a little.

Mr. Just. *Allybone*. Brother, I dare rely upon it, that I am right; it was so declared by all the Judges.

Mr. Sol. Gen. The Puritans presented a Petition to that purpose, and in it they said, If it would not be granted, they would come with a Great Number.

Mr. Just. *Powel*. Ay, there it is.

Mr. Just. *Allybone*. I tell you, Mr. *Solicitor*, the Resolution of the Judges is, That such a Petition is next door to Treason, a very great Misdemeanour.

Mr. Just. *Powel*. They accompanying it with Threats of the People's being discontented.

Mr. Just. *Allybone*. As I remember, it is in the Second Part of the Folio 35, or 37, where the Resolution of the Judges is, That to frame a Petition to the King to put the Penal Laws in Execution, is next door to Treason; for (say they) no Man ought to intermeddle with Matters of Government without Leave of the Government.

Mr. Serj. *Pemberton*. That was a Petition against the Penal Laws.

Mr. Just. *Allybone*. Then I am quite mistaken indeed, in case it be so.

Mr. Serj. *Trinder*. That is not material at all, which it was.

Mr. *Pollixfen*. They there threatned, unless their Request were granted, several Thousands of the King's Subjects would be discontented.

Mr. Just. *Powel*. That is the Reason of that Judgment, I affirm it.

Mr.

The Tryal of the Seven Bishops. 373

Mr. Just. *Allybone*. But then I'll tell you, Brother, again, what is said in that Case that you hinted at, and put Mr. Solicitor in mind of: For any Man to raise a Report that the King will, or will not, permit a Toleration, if either of these be disagreeable to the People, whether he may, or may not, it is against Law; for we are not to measure things from any Truth they have in themselves, but from that Aspect they have upon the Government; for there may be every Tittle of a Libel true, and yet it may be a Libel still: So that I put no great Stress upon that Objection, That the Matter of it is not False; and, for Sedition, it is that which every Libel carries in it self; and as every Trespass implies *Vi & Armis*, so every Libel against the Government carries in it Sedition, and all the other Epithets that are in the Information: This is my Opinion as to the Law in General.

I will not Debate the Prerogatives of the King, nor the Privileges of the Subject; but as this Fact is, I think, these Venerable Bishops did meddle with that which did not belong to them; they took upon them, in a Petitionary way, to contradict the Actual Exercise of the Government, which, I think, no private particular Persons, or single Body, may do.

L. Ch. Just. Gentlemen of the Jury, Have you a mind to Drink before you go?

Jury. Yes, my Lord, if you please.

[*Wine was sent for, for the Jury.*]

Juryman. My Lord, we humbly pray, that your Lordship would be pleas'd to let us have the Papers that have been given in Evidence.

L. Ch. Just. What is it that you would have, Sir?
Mr.

374 *The Tryal of the Seven Bishops.*

Mr. Sol. Gen. He desires this, my Lord, That you would be pleas'd to direct that the Jury may have the use of such Writings and Statute-books as may be necessary for them to make use of.

L. Ch. Just. The Statute-book they shall have.

Mr. Sol. Gen. But they can have no Papers, but what are under Seal.

Mr. Serj. Levinz. They may have them by Consent, and they may have a Copy of the Information.

L. Ch. Just. They shall have a Copy of the Information, and the Declarations under Seal.

Mr. Pollixfen. If they have those and the Libel (as they call it) they will not need a Copy of the Information.

Mr. Att. Gen. My Lord, we pray that your Lordship would be pleas'd to ascertain what it is they shall have.

L. Ch. Just. They shall have a Copy of the Information, the Libel, and the Declarations under the Great Seal.

Mr. Sol. Gen. But not the Votes of the House of Commons, nor the Journals, for they are not Evidence.

L. Ch. Just. No, I don't intend they shall.

Sir Rob. Sawyer. My Lord, we pray they may have the whole Petition.

Mr. Just. Holloway. That is, with the Direction and Prayer, you mean.

Mr. Att. Gen. Yes, with all our Hearts.

[*Then the Court arose, and the Jury went together to consider of their Verdict, and staid together all Night, without Fire or Candle.*]

On

The Tryal of the Seven Bishops. 375

On Saturday the 30th Day of June, Anno Dom. 1688, about Ten of the Clock in the Morning, the Archbishop, and the rest of the Bishops, came again into the Court, and immediately after the Jury were brought to the Bar.

Sir Sam. Astry. Cryer, Take the Appearance of the Jury. Sir Roger Langley.

Sir Rog. Langley. Here.

Cryer. Vous avez, &c.

[And so all the rest were call'd, and answer'd.]

Then Proclamation for Silence was made.

Sir Sam. Astry. Gentlemen, are you agreed on your Verdict?

Jury. Yes.

Sir Sam. Astry. Who shall say for you?

Jury. Foreman.

Sir Sam. Astry. Do you find the Defendants, or any of them, Guilty of the Misdemeanour whereof they are impeached, or Not Guilty?

Foreman. NOT GUILTY.

Sir Sam. Astry. Then hearken to your Verdict, as the Court hath Recorded it—— You say, the Defendants, and every of them, are NOT GUILTY of the Misdemeanour whereof they are Impeached; and so you say all?

Jury. Yes.

[At which there were several great Shouts in the Court, and throughout the Hall.]

Mr.

376 The Tryal of the Seven Bishops.

Mr. Solicitor-General taking Notice of some Persons in Court that shouted, mov'd very earnestly that they might be committed; whereupon a Gentleman of Grays-Inn was laid hold on, but was soon after discharg'd. And after the Shouting was over, the Lord Chief-Justice reproving the Gentleman, said,

L. Ch. Just. Sir, I am as glad as you can be, that my Lords the Bishops are acquitted; but your Manner of rejoicing here in Court is indecent; you might rejoice in your Chamber, or elsewhere, and not here.

[Then speaking to Mr. Attorney, he said,] Have you any thing more to say to my Lords the Bishops, Mr. Attorney?

Mr. Att. Gen. No, my Lord.

[Then the Court arose, and the Bishops went away.]



FINIS.



